

1087

No. 2955

1087

UNITED STATES
CIRCUIT COURT OF APPEALS,
FOR THE NINTH CIRCUIT

LOUIE DING and LOUIE LUNG GIN,
Plaintiffs in Error,
vs.

UNITED STATES OF AMERICA,
Defendant in Error.

TRANSCRIPT OF RECORD

UPON WRIT OF ERROR TO THE UNITED
STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASH-
INGTON, NORTHERN
DIVISION

Filed

Press of Pliny L. Allen Co., Seattle

MAR 19 1917

F. D. Monckton,
Clerk.

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*In the District Court of the United States for the
Western District of Washington. Northern
Division.*

No. 3282

UNITED STATES OF AMERICA,
Plaintiff,
vs.
JAMES F. WORTHINGTON, et al.,
Defendants.

NAMES AND ADDRESSES OF COUNSEL

WILLIAM R. BELL, Esq., Attorney for Defendants and Plaintiffs in Error,
422 New York Building, Seattle, Wash.

WALTER S. FULTON, Esq., Attorney for Defendants and Plaintiffs in Error,
1112 Hoge Building, Seattle, Wash.

CLAY ALLEN, Esq., Attorney for Plaintiff and Defendant in Error,
Room 310 Federal Building, Seattle, Wash.

WINTER S. MARTIN, Esq., Attorney for Plaintiff and Defendant in Error,
Room 310 Federal Building, Seattle, Wash.

*United States District Court, Western District of
Washington, Northern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES F. WORTHINGTON, MELVIN B. MIL-
LER, LOUIE E. LORTIE, LOUIE DING,
ENG DAN, alias NG DAN, alias CHINA
DAN, LOUIE LUNG GIN, ATSHUSHI ITO,
JUE LEE, SAM YUEN, FONG WEE, WONG
DING, NG WAH, LOCK WAH and WONG
WING,

Defendants.

No. 3282

INDICTMENT

*The United States of America, Western District
of Washington, Northern Division, ss.*

The grand jurors of the United States of
America, duly selected, impaneled, sworn and
charged to inquire within and for the Northern Di-
vision of the Western District of Washington, upon
their oaths present:

COUNT I.

That James F. Worthington, Melvin B. Mil-
ler, Louis E. Lortie, Louie Ding, Eng Dan, alias Ng
Dan, alias China Dan, Louie Lung Gin, Atshushi
Ito, Jue Lee, Sam Yuen, Fong Wee, Wong Ding,
Ng Wah, Lock Wah and Wong Wing on the tenth

day of December, A. D. one thousand nine hundred and fifteen, at Seattle, in the Northern Division of the Western District of Washington and within the jurisdiction of this court, did wilfully, knowingly, unlawfully, feloniously, wickedly and maliciously conspire, combine, confederate and agree together, and together and with divers other persons to these grand jurors unknown, to commit certain offenses against the United States, all as a part of said conspiracy mentioned, to-wit, to violate Section 11 of the Act of Congress of May 6, 1882, as amended and added to by the Act of July 5, 1884, in this: That it was the purpose and object of the said conspiracy and of the said conspirators, and each of them, to wilfully, knowingly, unlawfully, feloniously and maliciously bring into and cause to be brought into the division and district aforesaid, and aid and abet the landing of, by vessel, at Seattle in said division and district aforesaid, in the United States, from Vancouver, in the province of British Columbia, in the Dominion of Canada, certain Chinese alien persons not lawfully entitled to enter the United States, and not lawfully entitled to be or remain in the United States; which said Chinese persons were and are named as follows, to-wit: Jue Lee, Sam Yuen, Fong Wee, Wong Ding, Ng Wah, Lock Wah, Wong Wing, Lee Gin and Wong Yow, alias Wong You; and to violate Section 8 of the Act of Congress of February 20, 1907, as amended, in this:

That it was the purpose and object of the said conspiracy and of the said conspirators, and each of them, to wilfully, knowingly, unlawfully, feloniously and maliciously bring into and land in the United States, at Seattle, aforesaid, by vessel, certain alien persons, who had not theretofore been duly admitted by an immigrant inspector of the United States, and who were not lawfully entitled to enter the United States or be or remain in the United States at all; which said mentioned alien Chinese persons were and are named as follows, to-wit, Jue Lee, Sam Yuen, Fong Wee, Wong Ding, Ng Wah, Lock Wah, Wong Wing, Lee Gin and Wong Yow, alias Wong You.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That after the formation of said unlawful conspiracy and in pursuance of and to effect the object of said unlawful conspiracy, the said Louis E. Lortie, at Seattle in the northern division of the western district of Washington and within the jurisdiction of this court, on the tenth day of December, A. D. one thousand nine hundred and fifteen, did wilfully, knowingly, unlawfully and feloniously receive and take from said Louie Ding a letter written in Chinese, the contents of the said letter and name of the addressee thereof being to the grand jurors unknown.

And the grand jurors aforesaid, upon their oaths, do further present: That after the formation of said unlawful conspiracy and in pursuance of and to effect the object of said unlawful conspiracy, the said Louis E. Lortie, at Seattle, in the Northern Division of the Western District of Washington and within the jurisdiction of this court, on the tenth day of December, A. D. one thousand nine hundred and fifteen, did wilfully, knowingly, unlawfully and feloniously deliver and give to said James F. Worthington a letter written in Chinese, the contents of the said letter and name of the addressee thereof being to these grand jurors unknown.

And the grand jurors aforesaid, upon their oaths do further present: That after the formation of said unlawful conspiracy, the said Louie E. Lortie and the said James F. Worthington and the said Melvin B. Miller on the eleventh day of December, A. D. one thousand nine hundred and fifteen, did wilfully, knowingly, unlawfully and feloniously go on board a launch, to wit, the "Blanch W", at the city of Seattle, in the Northern Division of the Western District of Washington and within the jurisdiction of this court, and in the waters of Puget Sound, a more particular description of said place being to these grand jurors unknown, and immediately thereafter operate and navigate the said launch, "Blanch W," from said Seattle to the city of Vancouver, in the province of British Columbia

in the Dominion of Canada; a more particular description of said journey being to these grand jurors unknown.

And the grand jurors aforesaid, upon their oaths do further present: That after the formation of said unlawful conspiracy and in pursuance of and to effect the object of said unlawful conspiracy, the said Melvin B. Miller and the said James F. Worthington, on the fourteenth day of December, A. D. one thousand nine hundred and fifteen, together with said Jue Lee, Sam Yuen, Fong Wee, Wong Ding, Ng Wah, Lock Wah and Wong Wing, at Vancouver, in the province of British Columbia in the Dominion of Canada, did wilfully, knowingly, unlawfully and feloniously embark upon a certain launch called and named "Blanch W" and immediately thereafter sailed and traveled on said launch from the said city of Vancouver to the city of Seattle, in the Northern Division of the Western District of Washington.

And the grand jurors aforesaid, upon their oaths do further present: That after the formation of said unlawful conspiracy and in pursuance of and to effect the object of said unlawful conspiracy, the said Melvin B. Miller and the said James F. Worthington, together with said Jue Lee, Sam Yuen, Fong Wee, Wong Ding, Ng Wah, Lock Wah and Wong Wing, on the fourteenth day of December, A. D. one thousand nine hundred and

fifteen, at Vancouver, in the province of British Columbia in the Dominion of Canada, did wilfully, knowingly, unlawfully and feloniously embark upon a motor boat or launch named "Blanch W", and then and there and immediately thereafter bring, and cause to be brought, two certain mentioned Chinese alien persons, to wit, Lee Gin and Wong Yow, alias Wong You, who were then and there Chinese laborers, from said city of Vancouver, to the city of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, on board said launch; all for the purpose of landing the said Lee Gin and the said Wong Yow, alias Wong You, in the said city of Seattle.

And the grand jurors aforesaid, upon their oaths do further present: That after the formation of the said unlawful conspiracy and in pursuance of and to effect the object of said unlawful conspiracy, the said James F. Worthington and the said Melvin B. Miller, on the fourteenth day of December, A. D. one thousand nine hundred and fifteen, at Vancouver, British Columbia, in the Dominion of Canada, did wilfully, knowingly, unlawfully and feloniously go on board a launch or motor boat, named "Blanch W," and immediately thereafter commence to operate, control, attend to and navigate the said motor boat, and immediately thereafter did operate and navigate the said boat

from said Vancouver to said Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

CLAY ALLEN,
United States Attorney.

WINTER S. MARTIN,
Assistant United States Attorney.

Indorsed: The United States vs. James F. Worthington, et al. Indictment for Violation Sec. 37 Penal Code to violate Sec. 11, Act May 6, 1882, as amended, and Sec. 8, Act Feb. 20, 1907, as amended. A True Bill. John D. Wenger, Foreman Grand Jury. Presented to the Court by the Foreman of the Grand Jury in open Court, in the presence of the Grand Jury, and filed in the U. S. District Court, March 23, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

*United States of America, Western District of
Washington, Northern Division, ss.*

No. 3282

BENCH WARRANT

(Indictment)

The President of the United States—

To the Marshal of the United States of America, for the Western District of Washington, his Deputies, or any or either of them, Greeting:

Whereas, at a District Court of the United States of America, for the Western District of Washington, begun and held at the city of Seattle, within and for the District aforesaid, on the 23rd day of March, in the year of our Lord one thousand nine hundred and sixteen the Grand Jurors, in and for said District, returned into the said District Court a True Bill of Indictment against Louie Ding for violation Sec. 37, Penal Code, to violate Sec. 11, Act May 6, 1882, as amended, and Sec. 8, Act Feb. 20, 1907, as amended, as by the said Bill of Indictment, now remaining on file and of record in said Court, will more fully appear; to which Bill of Indictment the said Louie Ding has not yet appeared or pleaded:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Louie Ding and him

bring before the said Court, at the United States District Court Room, in the City of Seattle to answer the Bill of Indictment aforesaid.

Witness: The Honorable Jeremiah Neterer, Judge of the said District Court, and the Seal thereof, at the City of Seattle, this 23rd day of March, A. D. 1916.

(Seal)

FRANK L. CROSBY,
Clerk.

CLAY ALLEN, Esq.,

United States District Attorney.

MARSHAL'S RETURN

United States of America, Western District of Washington.

In obedience to the within Warrant, I have the body of the said Louie Ding before the Honorable, the District Court of the United States, in and for the Western District of Washington, this 25th day of March, A. D. 1916.

JOHN M. BOYLE,
U. S. Marshal,

By A. ROOKS,
Deputy U. S. Marshal.

Marshal's Fees, \$3.02.

Indorsed: Bench Warrant. (Indictment) Bail fixed at \$3,000.00. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Mar. 27, 1916. Frank L. Crosby, Clerk. By E. M. L., Deputy.

*United States of America, Western District of
Washington, Northern Division, ss.*

No. 3282

BENCH WARRANT

(Indictment)

The President of the United States—

To the Marshal of the United States of America, for the Western District of Washington, his Deputies, or any or either of them, Greeting:

Whereas, at a District Court of the United States of America, for the Western District of Washington, begun and held at the City of Seattle, within and for the District aforesaid, on the 23rd day of March, in the year of our Lord one thousand nine hundred and sixteen the Grand Jurors, in and for said District, returned into the said District Court a True Bill of Indictment against Louie Lung Gin for violation Sec. 37, Penal Code, to violate Sec. 11, Act May 6, 1882, as amended, and Sec. 8, Act Feb. 20, 1907, as amended, as by the said Bill of Indictment, now remaining on file and of record in said Court, will more fully appear, to which Bill of Indictment the said Louie Lung Gin has not yet appeared or pleaded:

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said Louie Lung Gin and him bring before the said Court, at the United

States District Court Room, in the City of Seattle to answer the Bill of Indictment aforesaid.

Witness: The Honorable Jeremiah Neterer, Judge of the said District Court, and the Seal thereof, at the City of Seattle, this 24th day of May, A. D. 1916.

(Seal) FRANK L. CROSBY,
Clerk.
By ED M. LAKIN,
Deputy Clerk.

CLAY ALLEN, Esq.,
United States District Attorney.

MARSHAL'S RETURN

United States of America, Western District of Washington—

In obedience to the within Warrant, I have the body of the said Louie Lung Gin before the Honorable, the District Court of the United States, in and for the Western District of Washington, this 24th day of May, A. D. 1916.

JOHN M. BOYLE,
U. S. Marshal.

By A. ROOKS,
Deputy U. S. Marshal.

Marshal's Fees \$2.12.

Indorsed: Bench Warrant. (Indictment). Bail fixed at \$2,500.00. Attest Frank L. Crosby, Clerk. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, May 25, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

No. 3282

ARRAIGNMENT AND PLEA—LOUIE DING

Now on this day into open Court comes the said defendant Louie Ding for arraignment, accompanied by his counsel Thos. B. MacMahon, and being asked if the name by which he is indicted is his true name, replies "My true name is Louie Tong Ding." Whereupon the reading of the indictment is waived and he here and now enters his plea of not guilty to the charge in the indictment herein against him.

Dated March 30, 1916.

Journal 5, Page 294.

No. 3282

ARRAIGNMENT AND PLEA—LOUIE LUNG GIN

Now on this day into open Court comes the said defendant Louie Lung Gin for arraignment, accompanied by his counsel Thos. B. MacMahon, and being asked if the name by which he is indicted is his true name, replies "It is." Whereupon the reading of the indictment is waived and he here and now enters his plea of not guilty to the charge in the indictment herein against him.

Dated May 24, 1916.

Journal 5, Page 351.

No. 3282

TRIAL

Now on this day this cause comes on for trial in open Court, the plaintiff being represented by Winter S. Martin, Asst. Dist. Atty., for the Government, and Thos. B. MacMahon appearing for defendants on trial as follows: Louie Ding, Louie Lung Gin, Jue Lee, Sam Yuen, Fong Wee, Wong Ding, Ng Wah, Lock Wah and Wong Wing. Both sides being ready for trial a jury is called and come and answer to their names as follows: A. R. Manca, C. E. Wilkins, Chas. H. Loux, John Storseth, J. W. Hughes, V. Elfendahl, J. C. Robinson, A. G. Newfang, Paul N. Myhre, A. P. Manion, R. J. Reichenbach, Thos. Alexander, twelve good and lawful men duly empaneled and sworn. On motion of defendants' counsel all witnesses except Thos. Fisher are excluded from the Court room during the trial. Opening statement is made by the Government and Louie Lortie examined. Plaintiff's exhibits are introduced as follows: Nos. 1, 2, 3, 4, 5 and 6. And now the hour of adjournment having arrived, by consent of parties it is ordered by the Court that this cause be and is hereby continued until ten o'clock tomorrow morning, and the Court having cautioned the jury in this case they are allowed to separate until that hour.

Dated June 1, 1916.

Journal 5, Page 361.

No. 3282

VERDICT

We, the jury in the above entitled cause, find Defendant Louie Ding is guilty. Defendant Louie Lung Gin is guilty. Defendant Jue Lee is guilty. Defendant Sam Yuen is guilty. Defendant Fong Wee is guilty. Defendant Wong Ding is guilty. Defendant Ng Wah is guilty. Defendant Lock Wah is guilty. Defendant Wong Wing is guilty. We recommend the last seven defendants to the clemency of the Court.

J. C. ROBINSON,
Foreman.

Indorsed: Verdict. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 2, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

No. 3282

MOTION FOR NEW TRIAL

Come now defendants Ding and Gin and move the Court to set aside the verdict of the jury rendered herein on the 2d day of June, 1916, and grant a new trial for the reason and upon the following grounds:

1. That said verdict is against and contrary to law.

2. That said verdict is against and contrary to the evidence.

3. Insufficiency of the evidence to justify the verdict.

4. Errors of law occurring during the trial and excepted to at the time by the said defendants.

5. Erroneous instructions given to the jury by the trial judge and particularly that part of the instructions wherein the trial judge instructed the jury that they would be justified in finding said defendants guilty if the evidence established beyond a reasonable doubt that the offense charged in the indictment had been committed any time within 3 years prior to the finding of said indictment.

WM. R. BELL,
Defendants' Attorney.

Indorsed: Motion for new trial. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 12, 1915. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

No. 3282

HEARING ON MOTION FOR NEW TRIAL

Now at this time the defendants Louie Ding and Louie Lung Gin and counsel being in open Court, motion is made for new trial and in arrest of

judgment, and the Court after hearing argument of respective counsel denies said motion.

Dated June 12, 1916.

Journal 5, Page 374.

No. 3299 and No. 3282

BOND

KNOW ALL MEN BY THESE PRESENTS, That we, Louie Ding, as principal, and Casualty Company of America, a corporation, organized and existing under and by virtue of the laws of the State of New York, and authorized to transact business of Surety in the State of Washington, as surety, are held and firmly bound unto the United States of America, Plaintiff in the above entitled actions in the penal sum of Three thousand dollars (\$3,000.00), lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, That whereas the above named defendant, Louie Ding, was on the 12th day of June, 1916, sentenced in the above entitled case No. 3282, to serve a term of two years in the United States penitentiary at McNeils Island in the State of Washington and in addition thereto to pay a fine of

five hundred dollars (\$500.00) and in the above entitled case No. 3299 was on the same date sentenced to serve a term of two years in the United States penitentiary at McNeil's Island in the State of Washington, to run concurrently with the sentence in the first mentioned case in addition to pay a fine of Five hundred dollars (\$500.00); and

WHEREAS, The said defendant has appealed from the sentence and judgment in each of said cases to the Circuit Court of Appeals of the United States for the Ninth Circuit; and

WHEREAS, The above entitled Court has fixed the defendant's bond, to stay execution of the judgment in both of the said cases, in the sum of Eight thousand dollars (\$8,000.00), of which there is now on file in said Court a bond in the sum of Five thousand dollars (\$5,000.00), bearing date the 12th day of June, A. D. 1916, with the aforesaid Casualty Company of America as surety thereon;

NOW THEREFORE, If the said defendant, Louie Ding, shall diligently prosecute his said appeals and shall obey and abide by and render himself amenable to all orders which said appellate court shall make, or order to be made, in the premises and shall render himself amenable and obey all process issued, or ordered to be issued, by said appellate court herein and shall perform any judgment made or entered herein by said appellate court, including the payment of any judgment on

appeal and shall not leave the jurisdiction of this court without leave being first had and shall obey and abide by and render himself amenable to any and all orders made or entered by the District Court of the United States for the Western District of Washington, Northern Division, and will render himself amenable and obey any and all orders issued by said District Court and shall pursuant to any order issued by said District Court surrender himself and will obey and perform any judgment entered herein by the said Circuit Court of Appeals or the said District Court, then this obligation to be void; otherwise to remain in full force and effect.

Sealed with our seals and dated this 19th day of June, A. D. 1916.

LOUIE DING,

CASUALTY COMPANY OF AMERICA,

By C. Summer Best, Resident
Manager and Attorney in fact.

(SEAL)

The foregoing bond is hereby approved this 19th day of June, 1916.

JEREMIAH NETERER,

United States District Judge.

Within bond approved this 23d day of June, 1916.

WINTER S. MARTIN,

Asst. U. S. Attorney.

Indorsed: Bond. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 23, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

No. 3282 and No. 3299

BOND

KNOW ALL MEN BY THESE PRESENTS, That we, Louie Ding, as principal, and Casualty Company of America, a corporation, organized and existing under and by virtue of the laws of the State of New York, and authorized to transact business of Surety in the State of Washington, as Surety, are held and firmly bound unto the United States of America, Plaintiff in the above entitled action, in the penal sum of Five thousand dollars (\$5,000.00), lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the above named defendant, Louie Ding, was on the 12th day of June, 1916, sentenced in the above entitled case No. 3282 to serve a term of two years in the United States penitentiary at McNeils Island in the State of Washington and in addition thereto to pay a fine of Five hundred dollars (\$500.00) and in the above entitled case No.

3299 was on the same date sentenced to serve a term of two years in the United States penitentiary at McNeils Island in the State of Washington, to run concurrently with the sentence in the first mentioned case and in addition to pay a fine of Five hundred dollars (\$500.00) and;

WHEREAS, The said Defendant has appealed from the sentence and judgment in each of said cases to the Circuit Court of Appeals of the United States for the Ninth Circuit; and

WHEREAS, The above entitled Court has fixed the defendant's bond, to stay execution of the judgment in both of the said cases, in the sum of Eight thousand dollars (\$8,000.00), of which there is now three thousand dollars (\$3,000.00) in cash on deposit with the registrar of the court;

NOW THEREFORE, If the said defendant, Louie Ding, shall diligently prosecute his said appeals and shall obey and abide by and render himself amenable to all orders which said appellate court shall make, or order to be made, in the premises and shall render himself amenable and obey all process issued, or ordered to be issued, by said appellate court herein and shall perform any judgment made or entered herein by said appellate court, including the payment of any judgment on appeal and shall not leave the jurisdiction of this Court without leave being first had and shall obey and abide by and render himself amenable to any and

all orders made or entered by the District Court of the United States for the Western District of Washington, Northern Division, and will render himself amenable and obey any and all orders issued herein by said District Court and shall pursuant to any order issued by said District Court surrender himself and will obey and perform any judgment entered herein by the said Circuit Court of Appeals or the said District Court, then this obligation to be void; otherwise, to remain in full force and effect.

Sealed with our seals and dated this 12th day of June, A. D. 1916.

LOUIE DING,

By W. R. Bell, his Attorney in
Fact.

CASUALTY COMPANY OF AMERICA,

By C. Summer Best, Resident
Manager and Attorney in Fact.

(SEAL)

The foregoing bond is hereby approved this 12th day of June, 1916, and the Marshal of this Court is hereby ordered to release the defendant, Louie Ding, from custody, pending the termination of his appeal and the fulfillment of the conditions of the foregoing bond.

JEREMIAH NETERER, Judge.

WINTER S. MARTIN,

Asst. U. S. Attorney.

Approved this 13th day of June, 1916.

United States District Judge.

Indorsed: Bond. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 13, 1915. Frank L. Crosby, Clerk. By Deputy.

No. 3282

**ORDER EXTENDING TIME TO JULY 22nd, 1916, FOR
SIGNING, ALLOWANCE AND FILING OF BILL
OF EXCEPTIONS**

Now on application of the defendants for an order extending the time for the signing, allowance and filing of the bill of exceptions herein, and cause being shown therefor, such application is granted and the time for the signing, allowance and filing of the bill of exceptions of the defendants is extended up to and including the 22nd day of July, 1916.

Done in open court this 13th day of July, 1916.

JEREMIAH NETERER, Judge.

WINTER S. MARTIN,

Asst. U. S. Attorney.

Indorsed: Order extending time to July 22, 1916, to file, etc., Bill of Exceptions. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, July 13, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

No. 3282

BILL OF EXCEPTIONS

BE IT REMEMBERED, That this cause came on regularly for trial before the Hon. Jeremiah Neterer, one of the Judges of the above entitled court, on this the 24th day of May, 1916, before a jury, duly empanelled and sworn, the plaintiff being represented by Clay Allen, Esq., and Winter S. Martin, Esq., United States Attorney and Assistant United States Attorney, respectively, and the defendants Louie Ding and Louie Lung Gin, being represented by Thomas B. MacMahon and William R. Bell, Esq.; whereupon a trial was had and testimony offered and taken and proceedings had and done, of which the following are excerpts. That it has been stipulated that the following portions of said proceedings and testimony are the only portions thereof that defendants Louie Ding and Louie Lung Gin shall be required to incorporate in the printed record on their appeal herein.

(OPENING STATEMENT OF MR. MARTIN, DISTRICT ATTORNEY.)

“The conspiracy is alleged to have commenced, in the indictment, on the 10th day of December, 1915, in Seattle, and to have continued until certain overt acts were thereafter performed. The first overt act charged in the indictment is that Louie Lortie, one of the defendants, in Seattle on December 10th, did re-

ceive and take from the defendant Louie Ding a letter written in Chinese the contents of which were unknown to the grand jurors, a letter or card or some sort of writing in Chinese. The second overt act is, that Lortie in Seattle on December 10, 1915, gave his co-defendant Worthington the same letter, a letter written in Chinese, the contents of which were unknown, that is, he just simply passed this letter over himself to the other man, an act which is alleged to have been done in furtherance of, and for the purpose of executing this scheme, and executing the conspiracy. The third overt act is that Lortie, Worthington and Miller on December 11th, went on board a launch named 'Blanch W.'; the overt act is, that they went on board of this launch and went from this port to Vancouver in furtherance of the scheme. The fourth overt act is, that Miller and Worthington with seven Chinese laborers who are named as defendants in this case, went on board the launch at Vancouver and came back to Seattle on December 14th, leaving Vancouver on December 14th. The gist of that overt act is that Miller and Worthington with seven alien Chinese laborers—rather the fourth overt act is that they simply went on board the boat at Vancouver. And the fifth overt act is, they came from Vancouver to Seattle. And the sixth overt act is, that they came from—charges that Worthington and Miller operated, navigated and sailed that boat to this port. Those are the several overt acts charged against these defendants for the purpose of carrying out the conspiracy or unlawful agreement which had theretofore been entered into on the 10th day of December."

(Bill of exceptions, pages 4 and 5.)

The principal witness for the government, Louie E. Lortie testified as follows on this point:

Q. (By MR. MARTIN, District Attorney.)

“Did you have such a conversation with Ding?

A. Yes, sir.

Q. With the defendant Louie Ding in this case?

A. Yes, sir.

Q. Where was that conversation held, in Seattle?

A. In that flat.

Q. In that flat?

A. Yes, sir.

Q. When was that conversation as near as you can tell?

A. Oh, about a week before we started.

Q. What?

A. A week before we left Seattle for that particular trip.”

(Bill of Exceptions, page 21.)

Q. (By MR. MacMAHON, attorney for Louie Ding and Louie Lung Gin.) “When did you receive this letter—what year?

A. 1915.

Q. What month?

A. I don't remember.

Q. You don't remember the month? You would not remember the date?

A. No.

Q. It might have been any time during the year?

A. It was shortly before Christmas."

(Bill of Exceptions, page 81.)

Q. (By MR. MacMAHON.) "You fix the time the following morning or three days after you returned from this trip?

A. I met him?

Q. Yes.

A. Somewheres about that.

Q. It could not have been sooner or later, it was about that?

A. Yes, sir.

Q. Either the next morning or about three days?

A. Yes, sir."

(Bill of Exceptions, page 137.)

The witness Melvin B. Miller called by the Government testified in respect to the time as follows:

Q. (By MR. MARTIN, District Attorney.) "How soon after your arrival from Vancouver did that interview with Ding take place? How soon after you arrived from Vancouver?

A. About three or four days.

Q. Now, after that interview at the Northern Pacific Hotel, or N. P. Hotel, did you hold any

conversation with Ding at any time or place?

A. At that time I was speaking of in the room.

Q. Did you talk with Ding after that?

A. He called me up afterwards.

Q. By 'phone?

A. Yes, sir.

Q. What did he say to you on the 'phone?

A. He told me to leave town.

Q. What else did he say?

A. There was trouble."

(Bill of Exceptions, pages 114 and 115.)

Q. (By MR. MacMAHON, attorney for defendants Ding and Gin.) "Northern Pacific Hotel on 6th Avenue about three days after you returned from Vancouver?

A. I think it was the next day, we returned at night and he called me up the next morning.

Q. After you returned from Vancouver?

A. Yes, sir.

Q. Could not have been mistaken about it? Might have been some other Chinaman?

A. I know Mr. Ding.

Q. Could not have been any other Chinaman you met the next morning?

A. No, sir.

Q. It is this Chinaman on which I am placing my left finger on his right shoulder, you are sure of that?

A. That is the gentleman.

Q. You met him the morning that you returned from this smuggling trip to Vancouver?

A. No, the next morning.

Q. What morning?

A. Two or three days after that."

(Bill of Exceptions, pages 129 and 130.)

On this point a witness for the Government named Eric Olson testified as follows:

Q. (By MR. MacMAHON, attorney for Louie Ding and Louie Lung Gin.) "Could not be any mistake about this being December 12th?

A. No.

Q. When did these men leave your hotel?

A. I could not exactly tell; between nine and eleven in the forenoon.

Q. On December 12th?

A. Yes, sir.

Q. That is the last you saw of them?

A. Yes, sir, as near as I can remember.

Q. Did they telephone while they were there?

A. Not that I know of.

Q. Let me call your attention to the figures on this sheet '13' and right in the next column to the signature 'Wood,' can you tell me the date that this man registered at your hotel?

A. Yes, he paid for the 13th and 14th; this

fellow registered in during the day and stayed the 13th and 14th.

Q. What date did they register in the hotel as appears from the register?

A. December 12th.

Q. Did they leave December 12th?

A. Yes, sir."

(Bill of Exceptions, page 140.)

The witness for the Government, James P. Worthington testified as follows on this point:

Q. (By MR. MARTIN, District Attorney)
"Did you have occasion to go to Vancouver in December, 1915 for any purpose?

A. I contracted with Lortie to go there, yes, sir.

Q. Did Lortie and Miller go with you?

A. Yes, sir.

Q. Now, when did you first make arrangements to go on that trip?

A. Lortie called my house and informed my housekeeper he wanted to see me, that was the evening of the 9th of December.

Q. The evening of the 9th of last December?

A. Yes, sir, when I came home that evening she informed me, and I called him up and went up to his house the next morning.

Q. What did Lortie say to you?

A. He wanted me to go to Vancouver with him.

Q. For what purpose?

A. To get a load of Chinese and some opium."

(Bill of Exceptions, page 142.)

Q. (By MR. MacMAHON, attorney for defendants Ding and Gin.) "What day of the week did you leave Seattle?

A. Saturday.

Q. You are positive of that?

A. Yes, sir.

Q. What day of the month?

A. The 10th, I think.

Q. The 10th. You are positive of that, Saturday; the 10th of what month?

A. December.

Q. Saturday the 10th of December. What day did you arrive in Vancouver?

A. We arrived in Vancouver the 12th.

Q. What day was that?

A. Monday.

Q. What day did you leave Vancouver?

A. 16th—15th or 16th."

(Bill of Exceptions, page 170.)

Another witness called by the Government, J. E. Meeker, testified as follows on this point:

Q. (By MR. MARTIN, District Attorney.) "Do you know the defendant Lortie in this case?

A. Yes, sir.

Q. Did he buy oil from you last December?

MR. MacMAHON: I object to that whether he did or not; nothing to do with the smuggling charge.

THE COURT: He may answer.

MR. MacMAHON: Exception.

A. I cannot say what date in December.

Q. Did he buy any oil in December?

A. I think he did.

MR. MacMAHON: I object to his opinion.

Q. I hand you a memorandum and ask you if you can refresh your recollection as to the purchase of oil by Lortie from the memorandum handed you?

MR. MacMAHON: I object to it unless it is established what it is he hands to him; just picks something up.

THE COURT: If you can look at that and then know what it is—if you can tell when he did buy it.

A. That is not the name of his boat; that is not the name I knew the boat by. My best recollection the last time he was in there was three men aboard the boat.

Q. What name did you know Lortie by?

A. Lortie, that is the name I always put down; I have the date in my pocket, on the 11th he last came in there—that would be December.

Q. What is the date of the memorandum?

A. This is the 10th.

Q. 10th of the twelfth month?

A. Yes, sir.

Q. Is that made in your handwriting?

A. Yes, that is my writing.

Q. Made at the time of the sale?

A. Yes, sir.

Q. By you?

A. By me, yes, sir.

Q. Does your book correctly record the incident of that sale by you?

A. Yes, sir, the day and date and time it was filled."

(Bill of Exceptions, pages 218 and 219.)

After the Government had rested its case, the defense interposed a number of witnesses who testified that the defendant Louie Ding and the defendant Louie Lung Gin were absent from the city of Seattle and the state of Washington, during the month of December, 1915, at the time fixed by the indictment and the evidence of the Government, as when the conspiracy was alleged to have been entered into in the city of Seattle by said defendants.

The first witness called by the defense on this point was Lou Yee Kee, who testified upon this point as follows:

Q. By Mr. MacMAHON, (Attorney for defendants Ding and Gin.) "Were you manager of that hotel during December, 1915?

A. I have been the manager there since the hotel was first opened.

Q. Were you manager during December, 1915?

A. Yes, sir.

Q. The witness is shown a book and asked what it is?

A. Record of the guests who took rooms in the hotel.

MR. MacMAHON: At this time we will ask that it be marked for identification, if you please. (Book marked Defendants' identified Exhibit 'B.')

Q. Does this register book now marked by the clerk 'Defendants' Exhibit B' for identification, show the record of guests that stopped at your hotel during the month of December, 1915?

A. Yes, sir.

Q. You are given Defendants' Exhibit B for identification and requested to turn to that part of the record in that book which shows the guests registering there during December, 1915.

A. Yes, I do so.

Q. Point to the page in December.

A. Started from December, 3rd.

Q. Now, commencing on the page you have pointed to as December 3rd, 1915, do you find any

record of Louie Ding, the defendant you recognized and identified, as having been registered at your hotel?

A. Yes, sir, right here.

Q. Point to it.

MR. MARTIN: I would like to ask concerning the entry, please.

THE COURT: Let us have the date where he pointed to.

Q. (By MR. MacMAHON.) What is the date?

A. December 3rd, beginning.

Q. What year?

A. Last year.

Q. In figures what year?

A. 1915."

(Bill of Exceptions, pages 317, 318 and 319.)

"A. I saw him every day at the time.

Q. What was the last day in December you saw him?

A. On the 21st, when he left the hotel.

Q. What was his answer?

A. On the 21st, when he left the hotel.

Q. On the 21st of December, 1915, was it?

A. Yes, sir."

(Bill of Exceptions, page 323.)

Q. (By MR. MacMAHON, attorney for Louie Ding and Louie Lung Gin.) "When was the last record by you of Ding's room rent in that book?

A. The 19th.

Q. When did you last see Ding in your hotel?

A. From the 3rd day until the 21st day when he left the hotel.

Q. Did you see him on the 21st of December?

A. Yes, sir."

(Bill of Exceptions, page 328.)

The next witness called by the defense who testified upon this point was Louis Tong, whose testimony upon this point was as follows:

Q. (By MR. MacMAHON.) "When was the first day in December, 1915, that you saw Louie Ding, the defendant at my left?

A. I saw him from the 1st until the 15th of that month.

Q. Is this the man that you saw in Portland? (Indicating Louie Ding.)

A. Yes, sir, he is that man; he is a merchant of Portland.

Q. Point to the man he means, Mr. Interpreter.

A. That man (indicating Louie Ding).

Q. You point to the man that he means that he saw in Portland; you point to him. (Witness indicates Louie Ding.)

Q. What days and dates in December did he see that man Louie Ding that he pointed at?

MR. MARTIN: I object to that on the ground he has already answered it; he said from the 1st to the 15th of December; question has been asked and answered.

THE COURT: I did not so understand it.

MR. MARTIN: He said from the 1st to the 15th.

Q. Is that correct, you saw this man Louie Ding, from December 1st to the 15th, 1915?

A. Yes, sir; I saw him at the railroad station on the 1st day he was leaving the station for the Exposition at San Francisco.

Q. 1st day of December, 1915?

A. Yes, sir, in the train.

Q. What was the last day in December that you saw Louis Ding anywhere?

A. I saw him in the store in Portland after he returned from his visit to the Fair, San Francisco, on the 15th.

Q. When?

A. 15th.

Q. Is that the last date you saw him?

A. I saw him a day or two after that, and then he left there for Seattle.

Q. Ask him if he knows what date Christmas comes on?

A. On the 25th, I think, if that is the turkey day, we had the turkey.

Q. And when did he last see Ding with reference to Christmas, before or after?

A. I saw him the day after Christmas, he returned to Portland from San Francisco.

Q. Where did he see the defendant after Christmas?

A. In my store in Portland."

(Bill of Exceptions, pages 523 and 524.)

The witness Louis Tong also testified as to the whereabouts of the defendant Louie Lung Gin, during the month of December, 1915, as follows:

Q. (By MR. MARTIN, District Attorney.) " * * * When did you first meet Louie Gin in December?

A. On the 15th, he took dinner with us before leaving the city.

Q. That is the man that took dinner with you that I am pointing to (indicating Louie Lung Gin)?

A. Yes, sir.

Q. He took dinner with you on the 15th of December, did he?

A. Yes, sir.

Q. And then he went down to California—down to visit the Exposition, did he?

A. He said he was going to Seattle, but I don't know where he was going after he leave the city.

Q. When, before the 15th of December, did you see this Louie Gin?

A. I see him every day, either in my store or I see him in his store.

Q. And is the man you said you met on December 1st?

A. I saw him.

Q. Was Louie Gin in Portland all last fall, if you know?

A. He was in Portland.

Q. Do you know whether he was in Portland from December 1st until December 15th?

A. Yes, sir, I remember we had business transactions, and we saw him in the store frequently—saw each other in the store.

Q. Where was he during the month of November, if you know?

A. I saw him very frequently during that month as he came to my store for goods.

Q. What makes you sure at this time it was the 15th of December he left Portland?

A. He was in Portland all the time until the day he told me that he was going to leave Portland, so we prepare a dinner especially on that occasion.”

(Bill of Exceptions, pages 527 and 528.)

The defendant Louie Lung Gin called as a witness in his own behalf testified as to his where-

abouts during the month of December, 1915, as follows:

Q. (By MR. MacMAHON, his attorney.)

“Where were you living during December, 1915?

A. Portland, 227 Second Street * * *.

Q. (By MR. MARTIN, District Attorney.)

You say you can't understand English? Lung Gin, you say you lived in Portland last December?

A. I did.

Q. When were you in Seattle before last December?

A. October last year.

Q. Were you in Seattle during September of last year?

A. I wish to correct my former statement, in which I said I was here the tenth month, which I mean the Chinese tenth month, but now I testified in English language the tenth month which is equivalent to October.

Q. Were you in Seattle during the months of August and September of last year?

A. No.

Q. How long were you in Seattle during the month of October?

A. About two weeks.

Q. What were you doing here during that two weeks?

A. To collect outstanding debts * * *.’”

Q. (By MR. MARTIN, District Attorney.)
“Were you here during the month of November at all, after you left about the 1st?

A. Not until the night of the 15th of December I came back here for the purpose of collecting the further debts I hadn’t collected.

Q. Collecting some other bills?

A. At the time.

Q. How long did you remain in Seattle when you came back in December?

A. Few days.

Q. How long; how many days?

A. About a week.

Q. Then did you go back to Portland?

A. Yes, sir.

Q. And were you in Portland during all that time after you got back until you were arrested?

A. Yes, sir.

Q. So that you were only here then two weeks during October, and about a week in December, during all of last fall?

A. That is all.”

(Bill of Exceptions, pages 540, 541, 542, 543.)

Another witness for the defense, G. Jung Chung, testified as to the whereabouts of the defendant Louie Ding in the month of December, 1915, as follows:

Q. (By MR. MacMAHON, attorney for Louie Ding and Louie Lung Gin.) "Do you know Louie Dong or Louie Ding?

A. I know Louie Dong Ding.

Q. Is that his correct name as you know it?

A. Yes, sir.

Q. Point to him. (Witness points to Louie Ding.)

Q. How long have you known him?

A. Since the first of the twelfth month of last year.

Q. Where did you meet him?

A. At the railroad station.

Q. Where?

A. Seattle railroad station, the new railroad station, Seattle.

Q. Do you know the name of the railroad?

A. No; the Chinese refer to it as the new railroad station.

Q. What time of the day?

A. After 9 o'clock or 9:30.

Q. Morning or night?

A. Morning.

Q. What day of the month and month?

A. The 1st of December.

Q. What year?

A. 1915.

Q. What did you do?

A. I was going to take the train for Sacramento.

Q. Who took the train for Sacramento with you, and where did you take the train?

A. Louie Dong.

Q. Where did you go aboard the train?

A. At the new railroad station.

Q. Where did you go then, and who was with you when you got aboard the train?

A. Louie Dong was with me, both were going to Sacramento.

Q. And where did you really go?

A. I went to Stockton.

Q. Who went with you?

A. Louie Dong.

Q. Stockton in the state of California?

A. Yes, sir.

Q. Was Louie Ding or Louie Dong Ding with you all the way from Seattle on that same train—that same coach between Seattle and Stockton, California?

A. Yes, sir.

Q. When did you reach Stockton, California?

A. About eleven o'clock in the evening of the third day.

Q. Third day of what?

A. December.

Q. What did you do? When you reached there at eleven o'clock on the 3rd day of December, 1915, who was with you.

A. Louie Dong.

Q. Point to him." (Witness indicates Louie Ding.)

(Bill of Exceptions, pages 571 and 572.)

Henry Fried, another witness called by the defense testified as follows upon this point:

Q. (By MR. MacMAHON, attorney for Louie Ding and Louie Lung Gin.) "Do you know Louie Dong or Louie Dong Ding, that I am pointing to with my left hand?

A. Yes, sir, I have known him for two years; I became acquainted with him in the latter part of two years ago.

Q. Did you know him in December, 1915?

A. Yes, sir, about Christmas time last year.

Q. What was the first day in December that you saw him?

A. I saw him after he went to San Francisco that month, I saw him, after he returned from San Francisco, on either the 28th or 29th of that month.

Q. What date did he go to San Francisco?

A. The first day, I went to the railroad station with him and bid him good bye.

Q. First day of what?

A. December.

Q. What railroad station?

A. To a railroad station; I don't know how to describe it.

Q. Was it the new depot, or the old depot?

A. I didn't go on as far as to the railroad station, but went to the Fourth Avenue.

Q. What time of day was that?

A. Between eight and nine o'clock.

Q. When did you next see him?

A. I didn't see him until his return about Christmas time.

Q. Before or after Christmas?

A. A little over a day before Christmas."

(Bill of Exceptions, page 581.)

Louie Ding, the defendant called as a witness in his own behalf, testified as to his whereabouts during the month of December, 1915, as follows:

A. "I left Seattle on the 1st day of December, 1915.

Q. (By MR. MacMAHON, his attorney.) What road?

A. Well on the railroad.

Q. On what?

A. I catch the train.

Q. Where did you go?

A. First of December in the morning I leave Seattle half past nine, and then go through to

Portland, I think 3:55 or 3:40, something like that, and then we telephone up to Louie Turner he came down to the depot, to the train, and he meet me there; I just talking to him a few words, then I leave Portland for California.

Q. That was the first of December you say you left here?

A. Yes, sir, first of December.

Q. Who was on the train with you leaving Seattle, if you remember?

A. That man's name is Q. Jung Chung.

Q. You mean the witness that testified at noon?

A. Yes, sir.

Q. How far did he travel with you, and between what points?

A. The same train leave Seattle to California, leave Davis, California.

Q. You mean that witness went from Seattle as far as Davis, California, and then changed the train to Sacramento?

A. Yes.

Q. On the 2nd of December where did you travel to and from?

A. Second of December I left Davis to Sacramento the train about twenty minutes past five with G. Jung Chung and go to I street restaurant and eat dinner.

Q. Where did you go from Sacramento, on December 2nd?

A. On the 2nd day in the night time stop at Sacramento, night time about six o'clock, I talk with one Chinaman friend of mine, then me and G. Jung Chung meet me to Stockton, and the time I leave him I street to the station, what they call electric car.

Q. What is the fare from Sacramento to San Francisco; how much fare?

A. I never go Sacramento to San Francisco; I go Sacramento to Stockton the second day nine o'clock in the evening.

Q. Where did you go next?

A. What is that?

Q. Where did you go then?

A. At nine o'clock went through to Stockton, arrive there at Stockton ten minutes past eleven.

Q. How long did you stay there?

A. Well, I stayed second day night, we go to a rooming house, and the next day in the morning, third day morning at six o'clock we catch Santa Fe train to San Francisco.

Q. How long did you stay in San Francisco?

A. I stayed in San Francisco 3rd day up to 22nd.

Q. How many days were you in Stockton, California in December, 1915, and what days?

A. You mean Stockton or San Francisco?

Q. How many days were you in Stockton, California, during December, 1915?

A. December 2nd midnight; I was in Stockton December 13th in the morning, Stockton to San Francisco.

Q. How many days were you in San Francisco during December, 1915?

A. San Francisco December 3rd, and I stop at San Francisco to December 22nd.

Q. Where did you stop?

A. Moon Ming Hotel.

Q. Moon Ming Hotel?

A. Yes, sir.

Q. What address?

A. I don't remember the address.

Q. How many days were you at the Moon Ming Hotel in San Francisco; how many nights did you sleep there in December, 1915?

A. December 3rd to December 22nd, live at the Moon Ming Hotel, except December 15th, I left there one day.

Q. You left there one day?

A. December 15th, San Francisco to Stockton to Sacramento; come back in San Francisco, December 16th; came back to San Francisco same place.

Q. How many days were you in Sacramento?

A. Just a couple of hours.

Q. Then after December 16, 1915, when you came from Sacramento to San Francisco, how many days did you remain in San Francisco?

A. I think about seven or eight days.

Q. Seven or eight days. Who did you see in San Francisco during that time?

A. Well, Moon Ming Hotel, the manager there, and a friend he is in the mining business.

Q. Where did you go in San Francisco during that time?

A. What is that?

Q. Where did you go; what places did you go?

A. You mean in San Francisco?

Q. Yes.

A. We leave up to Stockton to San Francisco, December 3rd in the morning between half past nine and nine o'clock I stop with G. Jung Chung and go to 37 Washington Street and take breakfast, then hire an automobile and go to Fair Ground, that day big rain.

Q. What day did you go to the Fair Grounds—you mean the Panama Pacific Exposition?

A. Yes, sir.

Q. What day did you go there?

A. Third and fourth, both, two days, I was there.

Q. Third and fourth of December, 1915?

A. Yes, sir.

Q. Who accompanied you?

A. One man named Louie Chue and other man belong to the Chung Wing Company, father owns

the store, and little boy, I forget the name.

Q. What was the last day in December you were in Sacramento?

A. 22nd day I leave Sacramento about eight o'clock in the evening.

Q. Where was that you were at eight o'clock?

A. Eight o'clock in the evening?

Q. Where?

A. In San Francisco to Sacramento.

Q. Who did you see there? Did you transact any business?

A. We go up Sacramento 22nd and 23rd, I got drug store No. 113, I guess it is—in a drug store I meet a rich Chinese friend, and a white man, newspaper man.

Q. What is his name?

A. Turner."

(Bill of Exceptions, pages 604, 605, 606, 610, 611 and 612.)

After the Government had fixed the time of the formation of the conspiracy as being in the city of Seattle not earlier than the third day of December, 1915, and not later than the tenth day of December, 1915, and the evidence of the defense had established, that the defendant Louie Ding was in the state of California during all that period and that the defendant Louie Lung Gin was in the state of Oregon during all of that period, the court

gave the instruction complained of, as follows:

“Now in this case there was some evidence presented here by the defendant Ding of what is termed in some offenses as an alibi, that is, he was at another place at the time when the witnesses on the part of the government show, as they claim, that he was here and the conspiracy was entered into; and he could not have entered into the conspiracy because he was in California, for instance. Now you are instructed that if the defendant Ding was not here at the time that the conspiracy was entered into, of course, he would not, and did not, become a member of it afterwards, and, of course, he could not be held in this indictment. A party may be guilty of a conspiracy even though he is absent, however, in another state; his presence is not necessary, providing testimony would justify a conclusion that he entered into the conspiracy when he was absent. In this case the testimony is that the conspiracy was entered into while he was here. Now the testimony is somewhat indefinite as to just when that conspiracy was entered into. The Government charges it was entered into on the 10th day of December. Now it is not necessary that the government show that this conspiracy was entered into on the 10th day of December, if the testimony shows that the conspiracy was entered into at any time within three years prior to the time of the filing of this indictment by the grand

jury, which was on the 27th day of March, 1916, it would be sufficient, and it would be immaterial where the defendant Ding was at the time when the overt acts were done, or at the time when the co-conspirators went to British Columbia, if you find they did go to British Columbia and bring over, or attempt to bring over persons who were prohibited by law from entering the United States.”

(Bill of Exceptions, pages 675 and 676.)

The defendants excepted to this instruction before the jury retired to consider its verdict, as follows:

“We except further to the portion of the charge wherein Your Honor instructed the jury that the exact time of the conspiracy is not material, and it is sufficient if it appears beyond a reasonable doubt from the evidence that the conspiracy was entered into within three years prior to the return of the indictment in this case, for the reason that when the defense of alibi is interposed in a criminal case the element of time becomes material, as fixed by the evidence of the Government.”

(Bill of Exceptions, page 685.)

And thereupon the court again instructed the jury upon the subject of time and its materiality to the issue, as follows:

“My instructions with relation to the exact

time not being material may have been just a little general. Now while the law is, it being sufficient if the offense was proven at any time within three years prior to the time of the filing of the indictment, this conspiracy entered into and some overt act done, the conclusion must be arrived at from the evidence; you would not be justified in coming to a conclusion as to that arbitrarily, it must be predicated upon testimony, and that is submitted to you as to what the testimony is on the part of the Government, and on the part of the defense, with relation to that time, and you will conclude upon that evidence the testimony on the part of the government; you remember what it was, it is not necessary for me to refer to it, and you will determine whether it was inconsistent with any other testimony which was offered.”

(Bill of Exceptions, pages 686 and 687.)

The defendant Louis E. Lortie, called as a witness by the Government, testified on direct examination, *inter alia*, as follows:

Q. (By MR. MARTIN, United States District Attorney.) “Leaving Mayne Island, where did you go, Mr. Lortie?

A. Vancouver.

Q. Tell us now, Mr. Lortie, in detail what you did in Vancouver.

A. We landed at the foot of Kitsilano Street car line by the dock.

Q. Is that on English Bay?

A. English Bay—on the eastern side, I think, of English Bay.

Q. What was then done?

A. We got off and went ashore and I went to Grant Street—either 1761 or 1861 Grant Street.

Q. Who live at that house on Grant Street?

A. A man by the name of Lim Jim.

Q. Mr. Lortie, speak up a little bit louder; the jurors have difficulty in hearing you at this end. Who is Lim Jim, if you know; what does he do; what is his business?

A. I believe he has stores in Vancouver.

Q. Do you know where his store is located?

A. I know, but still I could not swear to the street.

Q. Refreshing your recollection do you know whether it is on Carral Street, or not?

MR. MacMAHON: I object to him suggesting.

THE COURT: No, he may ask him.

MR. MacMAHON: Exception.

Q. Do you remember whether on Carral Street—565 Carral Street?

A. I believe that is the place.

Q. Can you tell us now what time in the day you made the trip from where you left the boat

out to Lim Jim's house on Highland Street?

MR. MacMAHON: I object because he has not mentioned Highland Street.

MR. MARTIN: I withdraw the question.

Q. Where did you go to visit Lim Jim—Grant Street, you said?

A. Yes, sir.

Q. What?

A. Yes, sir.

Q. What was the number on Grant Street?

A. 1761 or 1861, I am not sure.

Q. What time of the day did you go out to the Grant Street house?

A. I could not say.

Q. Do you know what Worthington and Miller did while you were gone, or where they went?

A. They delivered those letters.

Q. What if anything, did you say, or what was said to you by Lim Jim out on Grant Street?

MR. MacMAHON: I object, unless the defendants were present; Lim Jim is not one of the defendants nor named as a conspirator. (Question read.)

THE COURT: Who is Lim Jim?

MR. MARTIN: The man they were dealing with, whom the testimony will show received the letters.

THE COURT: You may answer.

MR. MacMAHON: Exception.

Q. The court says you can answer.

A. I made an agreement with him to get some opium.

Q. What was said concerning the opium; what was the agreement?

A. The agreement I was to be at the Kitsilano dock and it would be delivered there to me.

Q. How much opium was to be delivered to you?

A. I think it was 150 or 155 pieces.

Q. How much was to be paid you, if anything, for the delivery and transportation of this opium?

A. Two dollars apiece.

Q. Two dollars a tin?

A. Yes, sir.

Q. Did you then return to the boat?

A. Yes, sir * * *."

Q. "Tell me what was done after that; what you did, and what they all did.

A. I waited for the opium and a Chinaman came down to the dock and delivered the opium to me and I put it on the boat.

Q. How was the opium delivered—in what form?

A. In suit cases.

Q. Two suit cases?

A. Yes, sir."

(Bill of Exceptions, pages 27, 28, 29 and 30.)

Q. (By MR. MARTIN.) "Mr. Lortie, will you look at those two suit cases? Did you ever see those before?

A. They were just like that.

Q. Well, did you see them before, if at all?

A. I saw them the night we came down.

Q. And were the suit cases that you referred to as being put on your boat?

A. Yes, sir.

Q. Containing the seventy-five tins of opium each?

A. Yes, sir.

Q. In your judgment are these the cases?

A. I believe they are.

MR. MARTIN: We offer these two cases and the contents for identification as plaintiff's exhibits 3 and 4.

THE COURT: Let them be marked."

(Bill of Exceptions, page 45.)

Q. (By MR. MacMAHON, attorney for Louie Ding and Louie Lung Gin, on cross-examination.) "Then during all the time you described—I will make this general question to save a lot of cross-examination concerning Vancouver—all the time you were in Vancouver receiving, handling and transporting Chinese, opium, suit cases and other things you never saw Louie Ding, the Chinaman?

MR. MARTIN: I make the objection that the question is not definite enough.

MR. MacMAHON: He answers yes or no.

A. I never saw Louie Ding.

Q. I say during all the time you were in Vancouver to which you have testified on this particular trip, when you were delivering this letter in Vancouver, receiving as you said the two suit cases full of opium and the fourteen Chinese boys—taking them off the street car and putting them on your launch and leaving the dock and going away, did you see Louie Ding in Vancouver throughout your entire transaction?

A. No, sir."

(Bill of Exceptions, page 85.)

THE COURT: Is this cross-examination completed now?

MR. MacMAHON: Yes, sir.

Q. (MR. MARTIN.) You said you met Lim Jim and wanted to give an explanation where you met him but were not permitted; tell us where you met Lim Jim in Seattle.

A. In Louie Ding's place.

Q. When, where, under what circumstances?

A. No. I don't remember; in 1915.

Q. Do you remember when it was—1915?

A. Yes, sir.

Q. Before or after the Vancouver trip?

A. Before.

Q. How much before, or how long before?

A. A few months.

Q. What was said by Ding, Lim Jim or yourself upon that occasion?

A. There was an agreement made to go and get some opium for Louie Ding.

Q. Give us the entire conversation; tell me everything that was said.

MR. MacMAHON: I object if it was prior to the first date fixed in the indictment, the court has already ruled I cannot ask him concerning.

MR. MARTIN: Your cross-examination made it material.

THE COURT: Overruled.

MR. MacMAHON: Exception.

THE COURT: Noted.

Q. State the entire conversation on that occasion.

A. Louie Ding introduced him to me, and he told me he was a wealthy Chinaman in Vancouver, and he told me he wanted me to bring him some opium, and I went over and saw Louie Ding—or I met Jim Lim—Lim Jim I met in Vancouver.

Q. On the trip in question?

A. Yes, sir.

Q. Trip you have testified to in December?

A. The agreement I was to go and get this opium from Lim Jim.

Q. How much were you to receive for getting the opium, or for the opium?

A. I was to receive two dollars from this man when I got there.

Q. Two dollars for what?

A. Apiece.

Q. Apiece—what do you mean, apiece?

A. A can.

Q. Per can?

A. Yes, sir.

Q. How many cans were there in each of the dress suit cases at the time?

A. I don't remember. When I got there it seems that Louie was going to—.

MR. MacMAHON: I object to his conclusions—he said what seems to him.

THE COURT: State what was said.

A. The agreement was—Louie introduced me to this man—.

Q. By Louie you mean Louie Ding or the Louie in Vancouver?

A. Louie Ding introduced me to him at his place on King Street.

Q. 666?

MR. MacMAHON: There is a self-serving declaration.

THE COURT: No. Let him state where it was.

A. On King Street in the Milwaukee Block—in the gambling house; he introduced him to me and he told me his friend—.

MR. MacMAHON: I object on the ground this is a repetition of his answer to the question.

THE COURT: Proceed, he stated it.

Q. Who do you mean by 'he'—he told you.

A. Louie Ding.

Q. What did he tell you?

A. He told me to go over and get this opium, and the next time he probably would give me more."

(Bill of Exceptions, pages 96, 97 and 98.)

The witness Melvin B. Miller, called by the Government, testified in respect to this opium, as follows:

Q. (By MR. MARTIN, District Attorney.) "Did Lortie tell you how much money you were to receive on this trip for bringing these Chinese in?

A. No, sir.

MR. MacMAHON: I object to the question as being suggestive and leading.

THE COURT: No. He may answer.

Q. Was any mention made?

A. No arrangements made as to how much I was to get.

Q. Do you know how much Lortie was to get?

A. One hundred dollars a head.

Q. One hundred dollars a head. Was anything said about getting any opium in Vancouver?

A. Yes, sir.

Q. By whom, and when?

A. Mr. Lortie.

Q. During the trip?

A. Yes, sir.

Q. What was said about the opium?

A. Just said he didn't know how much he would get, but he would get some.

Q. Do you know how much Lortie was to receive for bringing the opium in?

A. He told me two dollars a tael * * *.

Q. How many Chinese came to the boat?

A. Fourteen.

Q. Do you know whether any opium was brought to the boat or not, or put aboard the boat?

A. I don't know anything about that * * *.

A. Mr. Lortie said, 'We are subject to a pinch most any time; the revenue men are after us,' and he told Mr. Worthington, he said 'Go to the boat and take these two suit cases off.'

Q. You did not see the suit cases?

A. No, sir.

Q. What then?

A. Mr. Worthington proceeded, I guess, to get the suit cases off; Mr. Lortie told me to go on home."

(Bill of Exceptions, pages 107, 108, 110 and 113.)

Q. (By MR. MacMAHON, attorney for Louie Ding and Louie Lung Gin, on cross-examination.)
“Did you see anyone take these two suit cases of opium from anywhere?

A. I saw those yesterday in the room.

Q. Who showed them to you?

A. I saw them in the court room.

Q. That was the first place you did see them?

A. Yes, sir.

Q. That is all you know about them?

A. Yes, sir.”

(Bill of Exceptions, page 127.)

The witness James F. Worthington, called by the Government testified in respect to this opium, as follows:

Q. (By MR. MARTIN, District Attorney.)
“Did you have occasion to go to Vancouver in December, 1915, for any purpose?

A. I contracted with Lortie to go there, yes sir.

Q. Did Lortie and Miller go with you?

A. Yes, sir.

Q. Now when did you first make arrangements to go on that trip?

A. Lortie called my house and informed my

housekeeper he wanted to see me, that was the evening of the 9th of December.

Q. The evening of the 9th of last December?

A. Yes, sir, when I came home that evening she informed me, and I called him up and went up to his house the next morning.

Q. What did Lortie say to you?

A. He wanted me to go to Vancouver with him.

Q. For what purpose?

A. To get a load of Chinese and some opium

* * *.

Q. How many Chinese came to your boat?

A. Fourteen. Louie brought eleven and the other party didn't bring his six; he brought the six, he had them on the car and three didn't get off, they went on across the creek, across to Kitsilano; we lost them.

Q. Do you know whether those Chinese had been down the evening before?

A. What is that?

Q. Do you know whether those six had been down the night before?

A. They had went over there and we were not there, at least I was not there.

Q. Did you see any opium or other merchandise brought on board?

A. No, that was put on while I was up in town, seeing the Chinese * * *.

Q. Did you see any suit cases on the boat that night?

A. Yes, sir. I had two of them.

Q. Mr. Worthington, will you come down from the witness stand and examine these suit cases and contents.

A. Yes, sir, those are the ones.

Q. Look at this one, ever see that before?

A. Yes, sir.

Q. Where?

A. Those two were the ones on the boat.

Q. What was done with them?

A. I took them off the boat and put them under the dock.

Q. At the foot of Harrison Street?

A. Yes, sir.

Q. What night did you return to the Port of Seattle?

A. What night I got into Seattle?

MR. MARTIN: I now offer in evidence these two suit cases that were marked for identification, Your Honor.

MR. MacMAHON: I would like to inquire whether you had had them open before the District Attorney?

A. Yes, I carried them.

Q. Where?

A. On board the boat.

Q. What for?

A. To look in them to see what was in there.

Q. How do you know they are the same now as they were then?

A. In fact I can swear it was the same.

Q. Did you count the number of tins?

A. No, I didn't count them.

Q. Have you ever seen other tins of opium besides these anywhere?

A. Yes, several of them.

Q. Did they all look alike?

A. Not all of them.

Q. Did you ever see any like this—looked like these?

A. Yes, sir.

Q. You saw similar tins to these?

A. Yes.

Q. You don't know whether there is the same number in this suit case as when you looked at it?

A. I don't know only what Lortie told me there was a hundred and fifty-five cans all together.

Q. You never counted them?

A. I never counted them.

Q. You don't know what is in them except what he told you?

A. I know there is opium in there.

MR. MacMAHON: We object to their admission.

THE COURT: Admitted.

MR. MacMAHON: Exception.

THE COURT: Note an exception."

(Bill of Exceptions, pages 142, 149, 150, 152 and 153.)

"At the close of the foregoing evidence in chief, offered by the plaintiff the counsel for defendants moved the court to direct a verdict for the defendants, submitting the same and the reasons therefor verbally in the words and figures following:

MR. MacMAHON: May I have the fourteen minutes remaining before adjournment to prepare a motion?

THE COURT: No, we will proceed now.

MR. MacMAHON: I wish to make a motion for a directed verdict.

THE COURT: Proceed.

MR. MacMAHON: Your Honor has heard the testimony concerning the defendants and all of them—

THE COURT: Make the motion without arguing.

MR. MacMAHON: I move Your Honor for a directed verdict as to the Chinese defendants, particularly as to the seven Chinese defendants whom no one here has recognized. Your attention is called to the testimony of the clerk Jackson who recognized no Chinese defendant at all, and only

mentioned the Japanese automobile driver, Ito. He testified he was personally present, he rode in the automobile with all the Chinese but would not identify or point out any one of the Chinese defendants; he only named a single person, that is the defendant here whose case has been severed from the others, that of the Japanese chauffeur, Ito.

THE COURT: Motion denied as to each of the defendants. Exception noted.

(Bill of Exceptions, page 463.)

The defendant Louie E. Lortie, called as a witness on behalf of the Government, testified *inter alia* on direct examination, as follows:

Q. (By MR. MARTIN, Assistant District Attorney) "Do you know the defendant Louie Ding in this case?"

A. Yes, sir.

Q. How long have you known him?

A. Oh, less than a year, I think.

Q. Do you know Louie Lung Gin, the defendant?

A. Well, about the same time.

Q. About the same length of time?

A. Yes, sir.

Q. Do you know what relation, if any, Louie Lung Gin bears to the defendant Louie Ding?

A. Yes, sir.

Q. What is the relation?

A. His nephew.

Q. Where is Louie Ding's place of business, if you know, or where was it in December—in the fall of 1915?

A. Excuse me, I want to finish that.

Q. Yes.

A. I knew him as his nephew through Louie; Louie told me he was his nephew.

Q. Where was Louie Ding's place of business in the fall of 1915?

A. He had a gambling house on King Street.

Q. What was the number on King Street?

A. I could not tell the number, it is in the Milwaukee building.

Q. Do you know of any building or flats or any apartment house that either Louie Ding or Louie Lung Gin had anything to do with last fall?

A. Yes, sir.

Q. Where was that?

A. On Main Street.

Q. What was it, a house?

A. A flat.

Q. Do you remember the number?

A. I think it was 1037.

Q. 1037?

A. Yes, it is on Main Street near 12th.

Q. On Main Street near 12th Avenue?

A. Yes, sir, on the south side of Main Street.

Q. How many rooms in the flat?

A. There is, I think four, maybe more—might be four or five.

Q. What, if you know, was the purpose of that flat—who lived there—what was it used for?

A. Well, I don't know who lived there; I know the boys were supposed to be taken there.

Q. What do you mean by 'boys.'

A. The Chinamen.

Q. What, if any, conversations did you have with Louie Ding in December of last year concerning any Chinese boys, or Chinese men?

A. Prior to this trip you mean?

Q. Yes, before you went on this trip, what, if any conversations did you have with Ding about bringing Chinese into the country?

A. I had the address of the Chinese, and I understood he would not be there, and I was to deliver them at this flat.

Q. Did you have such a conversation with Ding?

A. Yes, sir.

Q. With the defendant Louie Ding in this case?

A. Yes sir.

Q. Where was the conversation held, in Seattle?

A. In that flat.

Q. In that flat?

A. Yes, sir.

Q. When was that conversation as near as you can tell?

A. Oh, about a week before we started.

Q. What?

A. A week before we left Seattle for that particular trip.

Q. Did you receive anything from Louie Ding at that time?

A. I did.

Q. What?

A. Part of a letter * * *.

Q. What did you do—what steps did you take after you learned that the officers were about to arrest or catch the Chinese, what did you do?

MR. MacMAHON: I submit he has answered; he said he did nothing but wait.

THE COURT: Answer.

Q. Sir?

A. I overlooked something; I went down and seen Louie Lung Gin.

Q. Where did you meet Louie Lung Gin?

A. I met him at the flat 1037 Main Street.

Q. In the day or night, if you remember?

A. In the night; I think; I don't remember for sure, either.

Q. What did you say to Mr. Louie Lung Gin, or what did he say to you, during that meeting?

A. I told him about the trouble—he and another man, I believe China Dan was with him—I explained it to the two of them.

Q. Was China Dan present?

A. Yes, sir.

Q. What did you say to them?

A. I told them about the trouble, in fact they knew all about it; they knew as much about it as I did.

Q. Was any mention made in the conversation of the newspaper articles?

MR. MacMAHON: I object to the suggestion.

THE COURT: Let him state what was said and done without suggesting—if he knows.

MR. MARTIN: I am only calling his attention—

THE COURT: Let him state first.

Q. What was said and done, Mr. Lortie? What was said between you and Dan and Louie Lung Gin upon this occasion during the interview?

A. We just talked about the case; no agreement made how we should take them off or anything.

Q. During that conversation, let me ask you, was any reference—during the conversation made to the newspaper article concerning the expected arrest of these Chinese?

MR. MacMAHON: I most respectfully call your Honor's attention to the fact after you have repeatedly sustained the objection to that testimony he makes the same suggestions.

THE COURT: No, I think the suggestion is proper; the witness' attention was called to it; his memory is refreshed so that the jury will understand all the circumstances.

MR. MacMAHON. Exception. (Question read.)

A. Yes, sir.

Q. What was said, Mr. Lortie?

A. I said they had a slim chance; they mentioned they might get in all right, and told me to—I was to let them know as soon as they got in.

Q. What did they say about the newspaper article?

A. I could not say what they said; they talked so much I could not state what was said right then, until the boat got in * * *.

Q. Who did you meet at the flat, if any one?

A. China Dan and Louie Lung Gin.

Q. Louie Lung Gin?

A. This man sitting over there.

Q. Stand up, Louie Lung Gin. Is that the man? That is Louie Lung Gin that you met?

A. Yes, sir.

Q. What time in the evening, if you remember, did this meeting take place at the flat?

A. Oh, after dark—shortly after dark.

Q. After dark. What was said at the interview by Louie Lung Gin or Dan or yourself concerning this case?

MR. MacMAHON: I submit he has answered they were excited and could not remember what was said.

MR. MARTIN: This is not the same interview at all; the second interview.

THE COURT: Proceed.

A. I told him I did not know how to get the boys out of that as they were down there—got in all right.

Q. Down where?

A. Down at the foot of Harrison Street.

Q. In this city?

A. Yes, sir.

Q. Was that the substance of the telephone message which you had received?

MR. MacMAHON: I object to that.

THE COURT: Mr. Martin, I have ruled upon that, after I have ruled upon a matter there is no use in repeating it.

MR. MARTIN: If he repeated the message to these defendants, doesn't that render it material Your Honor; isn't it competent if he repeated the messages to these defendants?

THE COURT: Unless he told them the conversation.

MR. MARTIN: He did.

THE COURT: Proceed, let him state what the conversation was; let us find out. What did you say to Dan and Louie Lung Gin; give me the details of the conversation.

A. I explained to him I received a telephone—

Q. What did you say to them about that message? Tell me what you said to them.

A. I didn't know how to go and get them; he said he would go and get a machine; I says, 'We are in danger of getting grabbed.' I said, 'Now, you can suit yourself; I am afraid to go down there myself;' so he said, 'I will get a machine;' I said, 'I will go on down there ahead anyway'; and I went down town.

Q. Who said that, Lortie, if you remember?

A. China Dan stated—done the talking, most of it, but Louie Lung Gin was there too.

Q. Did he join in the conversation, if you remember?

A. Yes, sir, the conversation was between the two, but China Dan done the talking * * *. As soon as I located Mr. Worthington and Mr. Miller, I saw them smoking, I went up to them, when I got close they recognized me; as soon as I got close one of the boys said, 'You are under arrest,' I said, 'We are pretty close to it'; he said, 'the officers

are hiding here and watching us, I have already seen them'; I said to Mr. Miller, 'You better go home'; I told Mr. Worthington to take the boat, and in the meantime I expected the machine down; I walked up around, and I saw a good many watching there, I saw several men, something with lanterns underneath, and more than I supposed were officers, long black coats, I would not recognize them, if I seen them now—I know there was officers down there, and pretty soon I heard the machine coming, and the first thing I noticed was Louie Lung Gin, this man sitting over there, I met him down there, and he would not—it seems he would not go over there. I told him I did not want to go to the dock; I told him to go to the dock and speak to the Chinese and tell them—I didn't know for sure whether the machine had come down, I told him to tell them to get out one by one after awhile.

Q. Do you know how Louie Lung Gin came to the scene; do you know how he came there?

A. No.

Q. What?

A. No.

Q. Did you see the machine then?

A. No, sir, not just then.

Q. You met Louie Lung Gin then on foot.

A. Yes, sir.

Q. Proceed with your narrative.

MR. MacMAHON: I submit there is no question.

A. I would like to make that plain, just a few minutes before the machine got down there.

Q. Yes.

A. Finally the machine came down, I heard the machine coming, and I walked up the hill and met the machine coming down and they stopped, turned the lights on and I turned my back, and I met a man there, a stranger I had never seen before, he looked at me and I turned my head the other way as soon as the machine got down, and I walked down and I found Louie Lung Gin with that man over there whatever his name is (indicating defendant Ito).

Q. Is that the man you met?

A. Yes, sir.

Q. The defendant Louie Lung Gin in this case?

A. Yes, sir, at least it looks very much like the man, he cut his hair different.

Q. Yes.

A. So I heard the machine coming down and I met the machine, and I let it get—then I went down and showed them where the boys were. I went down—walked down to the dock and I told them to go down there and talk to them in the Chinese language; I told them that the suit cases were there.

Q. Who did you tell that to, Lortie?

A. Louie Lung Gin. I walked away from there then—I stepped back of the machine as soon as they had them located, I walked away, I walked up on the hill, I thought they had got away all right as soon as I heard some one hollering ‘Lortie,’ I heard the machine stop then I listened to them—had another machine there, and I think—I could not see very well, but I think they put part in one machine and left the rest in the other. That is the last I know of it.

Q. What did you do after the arrest, Lortie?

A. I went home?

Q. Did you see Worthington or Miller after that?

A. The next morning I went down and saw Worthington, and I think I went to see Mr. Miller too, and I told them what I noticed—what I saw, that the boys were grabbed.

Q. Where did you go after that?

A. I don’t know.

Q. Let me ask you this, did you go out of the state?

A. Not just then.

Q. What if anything was said during your last interview with Louie Ding as to where Mr. Ding would be when you arrived with the Chinese?

MR. MacMAHON: Now, I object to the suggestive question which indicates the answer.

THE COURT: No; what was said with relation to that, if anything?

A. Where Mr. Ding would be?

Q. Yes, what was said by Mr. Ding as to where he would be—where Ding would be when you arrived with the Chinese.

A. Prior to this you mean?

Q. Yes.

A. I was to deliver them at this flat.

Q. Was anything said by Louie Ding as to where he, Ding, would be when you got back?

A. Yes, sir, he would be in California.

Q. What else was said by Ding when he made that statement to you?

A. China Dan and Louie's nephew were to take care of them, he was to pay me.

Q. How much were you to receive for bringing in these Chinese?

A. One hundred dollars apiece * * *.

Q. Mr. Lortie will you look at those two suit cases? Did you ever see those before?

A. They were just like that.

Q. Well, did you see them before, if at all?

A. I saw them the night we came down.

Q. And were the suit cases that you referred to as being put on your boat?

A. Yes, sir.

Q. Containing the seventy-five tins of opium each?

A. Yes, sir.

Q. In your judgment are those the cases?

A. I believe they are.

Q. I hand you a photograph and ask you if you identify any one of the men in this photograph.

A. Number one I recognize as China Dan.

Q. Is China Dan the defendant referred to in your testimony in this case?

A. Yes, sir.

MR. MARTIN: I offer the photograph of China Dan, the other defendant—I offer that in evidence.

THE COURT: Any objection?

MR. MacMAHON: I object on the ground they are in no wise connected with the case, nor do they affect the defendant on the witness stand, or any of the defendants.

THE COURT: Is he one of the defendants?

MR. MARTIN: China Dan is one of the defendants.

MR. MacMAHON: He has not been apprehended and is not on trial.

THE COURT: Objection overruled; whichever one is the defendant, you better mark that. Let the witness mark the individual by some character. Let him mark a cross above China Dan.

(Witness marks cross above China Dan as directed.)
Photograph received in evidence and marked,
"Plaintiff's Exhibit No. 5."

(Bill of Exceptions, 19, 20, 21, 35 to 46 inc.)

R. W. BARKER, called as a witness on behalf of the Government, testified on direct examination, inter alia, as follows:

Q. (By MR. MARTIN, Assistant District Attorney.) "Your full name, Mr. Barker?"

A. R. W. Barker.

Q. You live in Seattle?

A. Yes, sir.

Q. Employed by the John Davis Company?

A. Yes, sir.

Q. How long have you been so employed?

A. About five years.

Q. Do you have charge of the rentals for that firm?

A. I did until about three weeks ago, of that particular department.

Q. I hand you a rental contract and ask you if that is the rental contract with John Davis Company?

MR. MacMAHON: I object, it speaks for itself; it is a written instrument.

THE COURT: It speaks for itself.

Q. Can you identify the instrument; is that one of your contracts?

A. Yes, sir.

Q. That covers the premises at 1037 Main Street?

MR. MacMAHON: I object to him telling him what premises it covers.

THE COURT: It speaks for itself.

MR. MARTIN: I understand I may ask some preliminary questions concerning the document?

THE COURT: Proceed.

MR. MacMAHON: I think there is not a word of evidence that would justify it being submitted—

THE COURT: Make your objection.

MR. MARTIN: I will withdraw the offer for a moment.

Q. I hand you a photograph and ask you if you can identify any of the men in that photograph?

A. The one marked '1' seems more familiar.

Q. What is your recollection as to seeing the man marked '1' there?

A. The party came in and rented a flat on Main Street.

Q. What number?

A. 1037.

Q. Is that the contract which I have referred to and handed you—is that the contract covering that house?

A. Yes, sir.

MR. MARTIN: Photograph, Your Honor, of the defendant Dan, by other testimony. I now offer in evidence the contract.

MR. MacMAHON: We wish to offer an objection to both. I object on the ground that the signed contract in no way indicates by any word written upon it either in the signature or in the body of the instrument anything connecting these defendants, or any of them, with the case at bar. It is contended by the District Attorney that the person who signed that, China Dan, is in some way connected with this case. We are not responsible for the acts of undisclosed persons who are either fugitives or otherwise; and we object to the introduction of photographs that have not been connected up with the case and with which we have nothing to do and with contracts of which this appears to be a copy—

Q. (Mr. MacMAHON.) Isn't it?

A. This is the original.

Q. What writing is the original?

A. This is the original contract.

THE COURT: Overruled.

MR. MacMAHON: Exception

THE COURT: Noted. Admitted. (Rental contract received in evidence and marked 'Plaintiff's Exhibit No. 12'; and photograph received in evidence and marked 'Plaintiff's Exhibit No. 5.')

Q. What is your recollection as to the man or the person who paid the rent on this flat?

A. I only collected the first month's rent.

Q. What member of the firm would know, if you know?

A. I doubt if any would know; the cashier is here.

Q. Possibly he could state.

THE COURT: Proceed.

Q. Do you know when the premises at 1037 Main Street were occupied?

A. Occupied from October 10th to February 10th.

Q. At what rental?

A. Eighteen dollars a month.

MR. MARTIN: (Addressing the jury), Plaintiff's Exhibit No. 12 is the rental contract. I will read it to you.

MR. MacMAHON: I object to him reading the contract at this time.

THE COURT: He may read it, it is in evidence. (Mr. Martin reads exhibit 12 to jury.)

Q. Is that your signature, Mr. Barker?

A. Yes, sir.

Q. Hing Lee, is that the signature of the man whom you have identified and who entered into that contract with you?

A. The man that rented the flat.

Q. What if anything did this man who came there to engage that flat say about the flat?

MR. MacMAHON: I object unless one of the defendants were present.

THE COURT: Overruled.

MR. MacMAHON: Exception.

A. You want me to tell the entire proceeding about it?

Q. No, state what he said.

A. My recollection is, that this Chinese came in and inquired about the flat—spoke about it on one or two occasions; about the 5th of October, or the 2nd of October, I think it was and said there was a friend of his in Portland that wanted the flat, was going to get married, and would not be in until late Saturday night, the 9th; he eventually came back and got the key and went through the flat, and was that afternoon I gave it to him, and he came back and said he would take it for his friend if it was repaired—some broken windows; so on the 5th of October he came in and paid a month's rent, and rented the flat for his supposed-to-be friend; was little objection in regard to starting the rent that day inasmuch as his friend would not be in for a few days—

MR. MacMAHON: I object to what his friend told him.

THE COURT: Overruled.

A. (Continuing)—his friend would not be in for a few days, and he thought we should split the difference and start the rent the day he would come which was on Sunday the 10th.”

(Bill of Exceptions, 207, 208, 209, 210.)

Thomas Fisher being called as a witness on behalf of the plaintiff, testified on direct examination *inter alia* as follows:

A. “About six P. M. that evening I went to Chinatown with Mr. Jackson and Patterson of the Immigration Service in a machine belonging to Mr. Jackson, for the purpose of locating and watching the movements of the defendant Louie Lung Gin and China Dan.

Q. Who is China Dan, what did you have to do with him?

A. What?

Q. Who is China Dan or Ng Dan; how long have you known him?

A. I have known him twenty years, I expect.

Q. Proceed with your statement, Mr. Fisher.

A. While we were looking for him, or for either of the two men, our machine broke down on King Street; leaving Patterson and Jackson to get the machine out of the road and arrange to have it fixed, I went on foot around Chinatown.

Q. Where did you leave Patterson and Jackson on King Street?

A. On King Street between 7th and 8th Avenues South.

Q. What did you do then?

A. Oh, possibly thirty minutes or three-quarters of an hour after I left them as I was coming around to go up Jackson Street I saw Dan and Louie Lung Gin coming down Jackson Street.

Q. From what direction were Dan and Louie Lung Gin approaching?

A. Coming west on Jackson Street, they were at the time I first saw them just east of 8th Avenue South.

Q. Do you know the premises at 1037 Main Street, Mr. Fisher?

A. Yes sir.

Q. What kind of a building is 1037 Main Street?

A. It is a flat building, also stores were in the building.

Q. How near 12th Avenue South?

A. It is about a quarter of a block.

Q. Is 11th Avenue cut through to Jackson Street at that point?

A. No sir.

Q. And with reference now to the flat, 1037 Main Street and its position, where was Dan and

Louie Lung Gin when you first saw them that evening?

A. They were coming from that direction.

Q. On Jackson Street?

A. Yes sir; owing to the fact of regrading the hill is sliding, and the street is caved in; Jackson Street is the only original way of reaching that point from that part of town.

Q. What did you do after you saw them at 8th and Jackson Street walking west?

A. I stepped around the corner and let them come down Jackson Street; after they passed me I followed them.

Q. Where did they go, and what did they do after that?

A. Went down Jackson Street to Maynard.

Q. What?

A. They went down Jackson to Maynard, down Maynard to King Street.

Q. Maynard on what street?

A. Between 6th and 7th.

Q. They turned from Jackson onto King?

A. Went down Maynard to King and there they stopped and talked to some man in the rear of an automobile—in the shadow of an automobile. It was raining a little bit at that time and I had my umbrella up, I was across the street and I walked across, and as I passed by Dan saw me and

recognized me and said something to Louie Lung Gin, and he turned around and looked at me; I stepped around the corner and stepped up into a lodging house named Fuge; I looked from the second story window over where they were standing, they talked a few minutes, and went away hurriedly up King Street as far as 8th Avenue, they turned around and they came back again down and stopped for a minute, and went back up and turned towards 8th Avenue and Jackson Street; I left the place as they went up the street and followed them; I didn't dare to get too close to them; after that I saw them standing near the machine between—just east of 8th Avenue on Jackson, an automobile run by Mr. Ito there.

Q. Mr. Ito.

A. Yes sir.

Q. Did you see Louie Lung Gin take this machine, or step into this machine?

A. I didn't see him step into the machine; I went on back down King Street, after I heard them talking—I hurried down King Street and across Jackson Street to Maynard Avenue, and when I looked up Jackson Street, I didn't see the machine and thought they had gone; thought they had gone. I met Mr. Patterson and hired a taxicab and started for the north end of the water front."

(Bill of Exceptions, 269, 270, 271, 272.)

MR. BELL: (Attorney for defendants Louie Lung Gin and Louie Ding)

“If your Honor please, before counsel for the Government proceeds with his argument, we desire to interpose at this time. the testimony being entirely closed, a motion for a directed verdict as to all of the Chinese defendants. And we desire to be heard for a few minutes in support of that motion, and more particularly in reference to the seven Chinese who were transported, and who are named as defendants in this indictment.

THE COURT: Have both sides rested?

MR. BELL: We so understand.

THE COURT: Has the Government rested?

MR. MARTIN: (District Attorney) Yes, Your Honor.

THE COURT: You want to be heard on the motion, Judge?

MR. BELL: Yes, Your Honor, briefly. I want to say that my argument will be limited to the position occupied by the seven Chinese who were transported. (Argument.)

THE COURT: The motion is denied.” (This motion was based upon the same grounds as the motion for directed verdict interposed at the close of the Government’s case in chief.)

(Bill of Exceptions, 665.)

The Court instructed the jury, *inter alia*, as follows:

“Now, a reasonable doubt is just such a doubt for which you can give a reason. When a juror is convinced to a moral certainty of the truth of the fact then he is convinced beyond a reasonable doubt. It is not a doubt which is imaginary, conjectural or speculative. Sometimes we say a reasonable doubt is such a doubt as a reasonable person in determining an issue of like concern to himself as that before the jury to the defendant would make him pause or hesitate in arriving at his conclusion.”

(Bill of exceptions, page 682.)

To this instruction the defendants duly excepted as follows:

MR. BELL: (Attorney for Louie Ding and Louie Lung Gin) “The defendants desire to except further to the definition which Your Honor gave on a reasonable doubt, particularly that portion of the charge where you stated to the jury that a reasonable doubt was one which they must be able to give a reason for.”

(Bill of exceptions, page 685.)

The Court further instructed the jury, as follows:

“Neither are you concerned with the fact that the defendants who are charged in this indictment with the commission of this offense in con-

junction with the other defendants, entered a plea of guilty, have not been sentenced; that is not a matter for your concern; that will be disposed of by the proper officers of this court, but you can take that into consideration, together with all the evidence of the witnesses that was presented here upon the witness stand, the demeanor of these defendants in their testimony, and determine, if you believe that they have been promised immunity or anything of that kind, will take that into consideration in weighing their testimony, but if from all of the circumstances as disclosed in this case by the witnesses, you believe that should not be given any weight or emphasis, you will so disregard it; otherwise you will consider it in a way that you, as twelve honest, fair-minded men believe it should be considered."

(Bill of Exceptions, page 681.)

To this instruction the defendants Louie Ding and Louie Lung Gin duly excepted as follows:

MR. BELL (Attorney for Louie Ding and Louie Lung Gin): "The defendants further except to the portion of the charge to the jury wherein Your Honor instructed them, that the fact that the defendants who have plead guilty—that the fact that certain defendants who have testified in this case have plead guilty is no concern of the jury."

(Bill of Exceptions, page 685.)

The jury retired to consider their verdict, and having returned into court a verdict against the de-

fendants, Louie Ding, Louie Lung Gin, Jue Lee, Sam Yuen, Fong Wee, Wong Ding, Ng Wah, Lock Wah and Wong Wing; and afterwards, to-wit: the 12th day of June 1916, the defendants Louie Ding and Louie Lung Gin, moved the court to set aside said verdict and grant a new trial, as follows:

“Comes now the defendants, Louie Ding and Louie Lung Gin, and move the court to set aside the verdict of the jury rendered herein on the 2nd day of June 1916, and grant a new trial, for the reason and upon the following grounds:

1. That said verdict is against and contrary to law.

2. That said verdict is against and contrary to the evidence.

3. Insufficiency of the evidence to justify the verdict.

4. Errors of law occurring during the trial, and excepted to at the time by the said defendants.

5. Erroneous instructions given to the jury by the trial judge, and particularly that part of the instructions wherein the trial judge instructed the jury that they would be justified in finding said defendants guilty if the evidence established beyond a reasonable doubt that the offense charged in the indictment had been committed any time within three years prior to the filing of said indictment.”

Which motion for a new trial was, after argument by counsel for and against the motion, respectively, and after due consideration by the court on the 12th day of June, 1916, overruled.

No. 3282

STIPULATION

It is stipulated by and between the plaintiff in the above entitled cause, and the defendants Louie Lung Gin and Louie Ding, through their respective attorneys, that the foregoing, being those portions of the original bill of exceptions herein which support the defendants' assignments of errors, is all of the original bill of exceptions that need be incorporated in the printed record on appeal. In preparing the printed record all captions except on Writ of Error, Citation on Writ of Error, and Order Allowing Writ of Error may be omitted.

Dated at Seattle, this 3rd day of March, 1917.

CLAY ALLEN and WINTER S. MARTIN,
Attorneys for Plaintiff.

WALTER S. FULTON and WM. R. BELL,
Attorneys for Defendants Louie Ding and
Louie Lung Gin.

Indorsed: Bill of Exceptions. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Mar. 3, 1917. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy.

No. 3282

PETITION FOR WRIT OF ERROR

To the Honorable Jeremiah Neterer, Judge of the District Court aforesaid:

Now comes the defendants Louie Ding, and Louie Lung Gin, by their attorneys, Walter S. Fulton and W. R. Bell, and respectfully show that on the 24th day of May, 1916, a jury duly impanelled herein found your petitioners guilty of criminal conspiracy and upon said verdict sentences were passed and final judgments were entered against your petitioners on the 12th day of June 1916.

Your petitioners feeling themselves aggrieved by said verdict and judgment entered thereon as aforesaid herewith petition the court for an order allowing them to prosecute a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit under the laws of the United States in such cases made and provided.

WHEREFORE, premises considered, your petitioner prays that a writ of error be issued and that an appeal in this behalf to the Circuit Court of Appeals aforesaid, situated in San Francisco in said Circuit, for the correction of the errors complained of and herewith assigned, be allowed, and that an order be made approving the bonds heretofore furnished by your petitioners and staying all further proceedings until the determination of said writ of

error by the said Circuit Court of Appeals, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals.

WALTER S. FULTON and
WM. R. BELL,

Attorneys for defendants Louie Ding and
Louie Lung Gin.

Indorsed: Petition for Writ of Error. Filed in the U. S. District Court, Western District of Washington, Northern Division, Nov. 8, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

No. 3282

ASSIGNMENT OF ERRORS

Now come the defendants Louie Ding and Louie Lung Gin and in connection with their petition for writ of error in this cause assign the following errors which said defendants aver occurred on the trial thereof and upon which they rely to reverse the judgment entered herein, as appears of record:

I.

That the court erred in instructing the jury that it was not necessary for the government to establish by the evidence that the conspiracy alleged in the indictment was entered into on the tenth day of December 1915, the date alleged in the indictment, and that it was sufficient if the evidence disclosed

that the conspiracy was entered into at any time within three years prior to the filing of the indictment by the grand jury, to-wit within three years of the 15th day of March 1916. Said instruction was as follows:

“Now in this case there was some evidence presented here by the defendant Ding of what is termed in some offenses as an alibi, that is, he was at another place at the time when the witnesses on the part of the Government show, as they claim, that he was here and the conspiracy was entered into; and he could not have entered into the conspiracy because he was in California, for instance. Now you are instructed that if the defendant Ding was not here at the time that the conspiracy was entered into, of course, he would not, and did not, become a member of it afterwards, and, of course, he could not be held in this indictment. A party may be guilty of a conspiracy even though he is absent, however, in another state; his presence is not necessary, providing testimony would justify a conclusion that he entered into the conspiracy when he was absent. In this case the testimony is that the conspiracy was entered into while he was here. Now the testimony is somewhat indefinite as to just when that conspiracy was entered into. The Government charges it was entered into on the 10th day of December. Now it is not necessary that the Government show that this conspiracy was entered into on the 10th day of December, if the testimony shows that the conspiracy was entered into at any time within three years prior to the time of the filing of this indictment by the grand jury, which was on the 27th day of March 1916, it would be sufficient, and it would

be immaterial, where the defendant Ding was at the time when the overt acts were done, or at the time when the co-conspirators went to British Columbia, if you find they did go to British Columbia, and bring over, or attempt to bring over persons who were prohibited by law from entering the United States."

The defendants excepted to this instruction before the jury retired to consider its verdict, as follows:

"We except further to the portion of the charge wherein Your Honor instructed the jury that the exact time of the conspiracy is not material, and it is sufficient if it appears beyond a reasonable doubt from the evidence that the conspiracy was entered into within three years prior to the return of the indictment in this case, for the reason that when the defense of alibi is interposed in a criminal case the element of time becomes material, as fixed by the evidence of the Government."

And thereupon the court again instructed the jury upon the subject of time and its materiality to the issue, as follows:

"My instruction with relation to the exact time not being material may have been just a little general. Now while the law is, it being sufficient if the offense was proven at any time within three years prior to the time of the filing of the indictment, this conspiracy entered into and some overt act done, the conclusion must be arrived at from the evidence; you would not be justified in coming to a conclusion as to that arbitrarily, it must be predicated upon testimony, and that is submitted to you as to what the testimony is on the part of the Government,

and on the part of the defense, with relation to that time, and you will conclude upon that evidence the testimony on the part of the Government; you remember what it was, it is not necessary for me to refer to it, and you will determine whether it was inconsistent with any other testimony which was offered."

II

The court erred in admitting in evidence, over the objection of the defendants, as part of the Government's case in chief, two suit cases and their contents consisting of about one hundred and fifty cans of opium, for the reason that the defendants were not charged in the indictment with illegally importing opium.

III

The court erred in denying the motion of the defendant Louie Lung Gin for a directed verdict of acquittal made at the close of the Government's case in chief, which motion was based upon the following grounds:

(a) Insufficiency of the evidence to establish the existence of any conspiracy to import alien Chinese;

(b) Insufficiency of the evidence to show that said defendant knew of or was connected with the alleged conspiracy during its existence;

(c) That the alleged conspiracy was consummated and merged into the substantive offense of importing a prohibited class of aliens.

IV.

The court erred in denying the motion of the defendant Louie Ding for a directed verdict of acquittal made at the close of the Government's case in chief, which motion was based upon the following grounds:

(a) Failure of the plaintiff to establish by proof the existence of a conspiracy to import alien Chinese;

(b) Insufficiency of the evidence to show that said defendant knew of or was connected with the alleged conspiracy during its existence;

(c) That the alleged conspiracy was consummated and merged into the substantive offense of importing a prohibited class of aliens.

V.

The court erred in denying the motion of the defendant Louie Lung Gin for a directed verdict made at the close of the entire case, which motion was based upon the same grounds as were urged by said defendant upon his motion for a directed verdict made at the close of the Government's case in chief.

VI.

The court erred in denying the motion of the defendant Louie Ding for a directed verdict made at the close of the entire case, which motion was

based upon the same grounds as were urged by said defendant upon his motion for a directed verdict made at the close of the Government's case in chief.

VII.

The court erred in instructing the jury that a reasonable doubt is one for which the jurors could give a reason. The instruction complained of is as follows:

“Now a reasonable doubt is just such a doubt for which you can give a reason. When a juror is convinced to a moral certainty of the truth of the fact then he is convinced beyond a reasonable doubt. It is not a doubt which is imaginary, conjectural or speculative. Sometimes we say a reasonable doubt is such a doubt as a reasonable person in determining an issue of like concern to himself as that before the jury to the defendant would make him pause or hesitate in arriving at his conclusions.”

To this instruction, the defendants duly excepted as follows:

MR. BELL (Attorney for Louie Ding and Louie Lung Gin) “The defendants desire to except further to the definition which your Honor gave on a reasonable doubt, particularly that portion of the charge where you stated to the jury that a reasonable doubt was one which they must be able to give a reason for.”

VIII.

The court erred in instructing the jury that it was not concerned with the three defendants, Lortie, Miller and Worthington, who had pleaded guilty and were awaiting sentence at the time they testified on behalf of the Government. The instruction complained of is as follows:

“Neither are you concerned with the fact that the defendants who are charged in this indictment with the commission of this offense in conjunction with the other defendants, entered a plea of guilty, have not been sentenced; that is not a matter for your concern; that will be disposed of by the proper officers of this court, but you can take that into consideration, together with all the evidence of the witnesses that was presented here upon the witness stand, the demeanor of these defendants in their testimony, and determine, if you believe that they have been promised immunity or anything of that kind, will take that into consideration in weighing their testimony, but if from all of the circumstances as disclosed in this case by the witnesses, you believe that should not be given any weight or emphasis, you will so disregard it; otherwise you will consider it in a way that you, as twelve honest, fair-minded men believe it should be considered.”

To this instruction the defendants Louie Ding and Louie Lung Gin duly excepted as follows:

MR. BELL (Attorney for Louie Ding and Louie Lung Gin) “The defendants further except to the portion of the charge to the jury wherein

Your Honor instructed them, that the fact that the defendants who have plead guilty—that the fact that certain defendants who have testified in this case have plead guilty is no concern of the jury.”

IX.

The court erred in denying the motion of the defendant Louie Ding for a new trial, made upon the following grounds:

“(1) That said verdict is against and contrary to law. (2) That said verdict is against and contrary to the evidence. (3) Insufficiency of the evidence to justify the verdict. (4) Errors of law occurring during the trial, and excepted to at the time by the said defendants. (5) Erroneous instructions given to the jury by the trial judge, and particularly that part of the instructions wherein the trial judge instructed the jury that they would be justified in finding said defendants guilty if the evidence established beyond a reasonable doubt that the offense charged in the indictment had been committed any time within three years prior to the filing of said indictment.”

X.

The court erred in denying the motion of the defendant Louie Lung Gin for a new trial, made upon the following grounds:

“(1) That said verdict is against and contrary to law. (2) That said verdict is against and con-

trary to the evidence. (3) Insufficiency of the evidence to justify the verdict. (4) Errors of law occurring during the trial, and excepted to at the time by the said defendants. (5) Erroneous instructions given to the jury by the trial judge, and particularly that part of the instructions wherein the trial judge instructed the jury that they would be justified in finding said defendants guilty if the evidence established beyond a reasonable doubt that the offense charged in the indictment had been committed any time within three years prior to the filing of said indictment.”

XI.

The court erred in sentencing the defendant Louie Ding to serve a term of two years' imprisonment in the United States penitentiary at McNeil's Island in the State of Washington, and to pay a fine of \$500.00.

XII.

The court erred in sentencing the defendant Louie Lung Gin to serve a term of fifteen months' imprisonment in the United States penitentiary at McNeil's Island in the State of Washington.

WHEREFORE, defendants Louie Ding and Louie Lung Gin pray that the judgment of said court be reversed and this cause remanded to the said District Court with directions to dismiss the same and discharge said defendant from custody and exonerate the sureties on his bail bond.

WM. R. BELL and WALTER S. FULTON,
Attorneys for defendants Louie Ding
and Louie Lung Gin.

Filed this 8th day of November, 1916.

FRANK L. CROSBY, Clerk,

By Ed M. Lakin, Deputy.

Clerk of the United States District Court, for
the Western District of Washington, Northern
Division.

Indorsed: Assignment of Errors. Filed in the
U. S. District Court, Western Dist. of Washington,
Northern Division, Nov. 8, 1916. Frank L. Crosby,
Clerk. By Ed M. Lakin, Deputy.

*United States District Court, Western District of
Washington, Northern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES F. WORTHINGTON, MELVIN B. MILLER, LOUIE E. LORTIE, LOUIE DING, ENG DAN, alias NG DAN, alias CHINA DAN, LOUIE LUNG GIN, ATSHUSHI ITO, JUE LEE, SAM YUEN, FONG WEE, WONG DING, NG WAH, LOCK WAH and WONG WING,

Defendants.

No. 3282

ORDER ALLOWING WRIT OF ERROR

Now on this 8th day of November 1916, came the defendants Louie Ding and Louie Lung Gin by their attorneys, Walter S. Fulton and W. R. Bell, and filed herein and presented to the court their petition, praying for the allowance of a writ of error intended to be urged by them praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had as may be proper in the premises; and that an order be made approving the bond heretofore furnished by the defendants Louie Ding and

Louie Lung Gin and staying all further proceedings until the determination of said writ of error by the said Circuit Court of Appeals.

Now, on consideration of said petition and being fully advised in the premises, the court does hereby allow the said writ of error.

And it is hereby ordered that the security heretofore furnished by the defendants Louie Ding and Louie Lung Gin for his appearance whenever required according to the conditions of their bond, is hereby approved and all further proceedings are hereby suspended herein until the determination of said writ of error by the said Circuit Court of Appeals.

And it is further ordered that the defendants Louie Ding and Louie Lung Gin shall be released from custody pending the hearing and determination of said writ of error.

JEREMIAH NETERER,

Judge of the United States District Court for the Western District of Washington, Northern Division.

No. 3282. Original. In the District Court of the United States for the Western District of Washington, Northern Division, United States of America, Plaintiff, vs. Louie Lung Gin, et al., Defendants. Order Allowing Writ of Error. Filed

in the U. S. District Court, Western Dist. of Washington, Northern Division, Nov. 8, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

No. 3282

**ORDER EXTENDING TIME TO FILE TRANSCRIPT OF
RECORD**

Now, upon this 26th day of February, 1917, comes on to be heard the motion of the defendants Louie Ding and Louie Lung Gin for an order extending the time to file the transcript of the record on appeal herein, the said defendants appearing through their counsel, and the United States of America appearing through its counsel and consenting to such order.

It is, therefore, hereby ordered that the time heretofore allowed in which to file the transcript of the record herein in the United States Circuit Court of Appeals for the Ninth Circuit, be, and the same hereby is, extended to the twentieth day of March 1917.

Done in open court this 26th day of February, 1917.

JEREMIAH NETERER,
Judge.

We consent to the entry of the above order:
CLAY ALLEN,
Attorney for Plaintiff.

Indorsed: Order Extending Time to File Transcript of Record. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Feb. 25, 1917. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

No. 3282

STIPULATION AS TO RECORD

It is hereby stipulated between the plaintiff and the defendants Louie Ding and Louie Lung Gin, through their respective attorneys, that the following designated papers comprise all of the papers, exhibits and other proceedings which are necessary to the hearing of this cause upon writ of error to the United States Circuit Court of Appeals for the Ninth Circuit and that none but such papers need be included in the records of said court:

Indictment.

Warrant and return.

Plea.

Impanelling of jury.

Verdict.

Motion for new trial.

Order overruling motion for new trial, and motion in arrest of judgment.

Bond.

Bill of exceptions.

Petition for writ of error.

Assignment of errors.

Allowance of writ of error.

Writ of error.

Citation on writ of error.

Order extending time for serving and filing bill
of exceptions.

Order extending time for filing record.

Stipulation as to record.

Clerk's certificate.

It is also stipulated that the original exhibits herein may be attached to the record by the clerk and transmitted to the Circuit Court of Appeals and the same need not be printed.

CLAY ALLEN,
WINTER S. MARTIN,
Attorneys for Plaintiff.

WALTER S. FULTON,
WM. R. BELL,
Attorneys for defendants,
Louie Ding and Louie Lung Gin.

Indorsed: Stipulation as to record. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Dec. 14, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD

*United States of America, Western District of
Washington—ss.*

I, Frank L. Crosby, Clerk of the United States District Court, for the Western District of Washington, do hereby certify that the foregoing 109 printed pages numbered from 1 to 109, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause, as are necessary to the hearing of said cause on Writ of Error therein in the United States Circuit Court of Appeals for the Ninth Circuit, and as is stipulated ~~for~~ by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on return to said Writ of Error herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the Plaintiff in Error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, to wit:

Clerk's fee (Sec. 828 R. S. U. S.), for making record, certificate or return, 210 folios at 15c	\$31.50
Certificate of Clerk to transcript of record, 4 folios at 15c60
Seal to said Certificate20
Certificate of Clerk to original exhibits— 3 folios at 15c45
Seal to said Certificate.....	.20
Statement of cost of printing said transcript of record, collected and paid.....	151.25
Total	\$184.20

I hereby certify that the above cost for prepar-
ing and certifying record amounting to \$.~~184.20~~,
has been paid to me by Messrs. Wm. R. Bell and
Walter S. Fulton, Attorneys for Plaintiff in Error.

I further certify that I hereto attach and here-
with transmit the original Writ of Error and origi-
nal Citation issued in this cause.

In Witness Whereof I have hereto set my hand
and affixed the seal of said District Court, at Se-
attle, in said District, this 15th day of March,
1917.

(SEAL) FRANK L. CROSBY,
Clerk U. S. District Court.

*In the United States Circuit Court of Appeals,
Ninth Circuit.*

LOUIE DING, and LOUIE LUNG GIN,
Plaintiffs in Error,
vs.

UNITED STATES OF AMERICA,
Defendant in Error.

No. 3282

WRIT OF ERROR

*United States of America, Ninth Judicial Circuit—
ss.*

THE PRESIDENT OF THE UNITED STATES
OF AMERICA:

To the Honorable Judge of the District Court
of the United States for the Western District of
Washington, Northern Division:

Because in the record and proceedings, as also
in the rendition of judgment, of a plea which is in
the said District Court before you, between the
United States of America, as plaintiff and Louie
Ding and Louie Lung Gin and others, as defend-
ants, a manifest error hath happened, to the great
damage of the said defendants Louie Ding and
Louie Lung Gin, as by their complaint appears, and
we being willing that error, if any hath been, should
be corrected, and full and speedy justice done to

the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, you send the record and proceedings aforesaid, with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the state of California, where said court is sitting within thirty days from the date hereof in the said Circuit Court of Appeals to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States of America, this 8th day of November, 1916.

FRANK L. CROSBY,

(SEAL)

Clerk of the United States District Court for the Western District of Washington, Northern Division.

Allowed this 8th day of November, 1916, after plaintiffs in error had filed with the clerk of this court with their petition for a writ of error their assignment of errors.

JEREMIAH NETERER,

Judge of the District Court of the United States, for the Western District of Washington, Northern Division.

Copy of within Writ of Error received and acknowledged this 8th day of November, 1916.

CLAY ALLEN,
WINTER S. MARTIN,
Attorneys for Plaintiff.

Indorsed: No. 3282. Original. In the United States Circuit Court of Appeals, Ninth Circuit. Louie Ding and Louie Lung Gin, Plaintiffs in Error, vs. United States of America, Defendant in Error. Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Nov. 8, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES F. WORTHINGTON, MELVIN B. MIL-
LER, LOUIE E. LORTIE, LOUIE DING,
ENG DAN, alias NG DAN, alias CHINA
DAN, LOUIE LUNG GIN, ATSHUSHI ITO,
JUE LEE, SAM YUEN, FONG WEE, WONG
DING, NG WAH, LOCK WAH and WONG
WING,

Defendants.

No. 3282

CITATION ON WRIT OF ERROR

To the United States of America, Greeting:

You are hereby cited and admonished to be
and appear at a session of the United States Circuit
Court of Appeals for the Ninth Circuit to be holden
at the city of San Francisco, state of California,
within thirty (30) days from the date hereof, pur-
suant to a writ of error filed in the clerk's office of
the District Court of the United States for the
Western District of Washington, Northern Division,
wherein Louie Ding and Louie Lung Gin are plain-
tiffs in error, and the United States of America is
defendant in error, to show cause, if any there be,
why the judgment rendered against the said plain-

tiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Jeremiah Neterer, Judge of the United States District Court for the Western District of Washington, Northern Division, this 8th day of November 1916.

JEREMIAH NETERER,

(SEAL)

Judge.

Copy of within Citation on Writ of Error received and due service of the same acknowledged this 8th day of November, 1916. Clay Allen; Winter S. Martin, Attorneys for Plaintiff.

Indorsed: No. 3282. Original. In the District Court of the United States for the Western District of Washington, Northern Division. United States of America, Plaintiff, vs. Louie Lung Gin, et al., Defendants. Citation on Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Nov. 8, 1916. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.